

United States District Court
Southern District of California

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 10-CR-4246 JM
) Jury Trial/Day 2
BASAALY SAEED MOALIN,) Tuesday, January 29, 2013
MOHAMAD MOHAMAD MOHAMUD)
ISSA DOREH,) Volume 2
AHMED NASIR TAALIL MOHAMUD,)
)
Defendants.)

Before the Honorable Jeffrey T. Miller
United States District Judge

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Official Court Reporter: Debra M. Henson, CSR, RPR
U.S. Courthouse
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Record produced by stenographic reporter

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1 San Diego, California - Tuesday, January 29, 2013

2 (The following proceedings were had outside the presence
3 of the jury panel.)

4 THE CLERK: Calling matter 1 on calendar,
5 10-CR-4246, USA versus Basaaly Saeed Moalin, Mohamad Mohamad
6 Mohamud, Issa Doreh, Ahmed Nasir Taalil Mohamud, set for jury
7 trial.

8 MR. COLE: Good morning, your Honor. William Cole,
9 Caroline Han, and Steven Ward for the United States.

10 MR. DRATEL: Good morning, your Honor. Joshua
11 Dratel and Alice Fontier for Mr. Moalin.

12 MS. FONTIER: Good morning, your Honor.

13 MS. MORENO: Good morning, Judge. Linda Moreno on
14 behalf of Mr. Mohamud.

15 MR. DURKIN: Good morning, Judge. Tom Durkin and
16 Janis Roberts on behalf Ahmed Nasir Taalil Mohamud.

17 THE COURT: Very good. Thank you. From this point
18 forward, I will always appreciate everyone being here in a
19 timely fashion for all sessions of court so we can get
20 started right on the spot; I appreciate your cooperation in
21 that regard.

22 The jurors who are returning, as you probably know,
23 are assembling -- I don't think we need any of the defendants
24 at this point; this is just scheduling -- they're assembling
25 in Courtroom 15 up on the fifth floor. Roll will be taken up

1 there, making sure we have everyone. Then we'll have them
2 brought down here and we will proceed to place them in their
3 assigned seats.

4 Good morning, Mr. Ghappour. I was just indicating
5 to everyone that I really would appreciate everyone being
6 here promptly for each session so we can get started on time
7 and keep the case moving.

8 In any event, hopefully we haven't lost anyone.
9 When the jurors report here -- Mr. Ghappour, I was just
10 indicating they will be taking their assigned seats, and then
11 I'll have some general questions for them, and I will proceed
12 to address each one of them individually. We'll be working
13 with a 36-pack initially. And, once again, my part of it
14 will take a significant period of time, and then of course
15 counsel will participate in voir dire as well.

16 If it becomes the case that one of the panel
17 members will be excused for cause or any other reason, then
18 we will substitute for that individual at that time and in
19 the order in which they have been randomized on the list that
20 you all have. So that's pretty much what the procedure is
21 going to be. Mr. Dratel, you see -- there's a querulous look
22 on your face.

23 MR. DRATEL: There is, your Honor.

24 THE COURT: Okay.

25 MR. DRATEL: May I just consult with Ms. Moreno for

1 a second?

2 THE COURT: Sure.

3 MS. MORENO: I have two questions, two quick
4 questions, your Honor. Is the voir dire then only going to
5 be aimed at the jurors -- at the panel members in the box?

6 THE COURT: No, all 36.

7 MS. MORENO: All 36. You'll be voir diring all 36?

8 THE COURT: Right. We're working with a 36-pack
9 because obviously --

10 MS. MORENO: That's what I thought.

11 THE COURT: -- juror number 36 can ultimately be
12 sworn in as a juror, an alternate perhaps --

13 MS. MORENO: Exactly.

14 THE COURT: -- as well as anyone else. So it will
15 be a 36-pack we're working with.

16 MS. MORENO: And, your Honor, what protocol would
17 you like me to follow in terms of -- after your Honor is done
18 and when it's -- and Mr. Cole is done and I do my voir dire,
19 whenever that occurs, if I feel that on a particular juror I
20 feel I've made the cause record, let's say, can I then
21 approach your Honor -- I mean how do you want me to handle
22 that?

23 THE COURT: Yes. First of all, your voir dire will
24 go first before Mr. Cole's, okay, and I assume you're
25 proceeding for yourself or everyone?

1 MS. MORENO: For everyone.

2 THE COURT: For everyone as your voir dire. So
3 you'll go first, Mr. Cole will -- oh, Mr. Ward? Mr. Ward?

4 MR. WARD: Yes, your Honor.

5 THE COURT: I saw Mr. Cole hand off the football,
6 and I didn't know whether it was to you or Ms. Han, okay, so
7 you'll be going after Ms. Moreno.

8 And with respect to cause, after both sides are
9 done with their voir dire -- well, after the Court's voir
10 dire is done and voir dire of counsel, then we'll just have a
11 bit of a session here at the side of the bench if jurors are
12 still in our midst, which is probably unlikely, but outside
13 the presence of the panel, and then challenges for cause can
14 be made then.

15 MS. MORENO: I guess my question then, your Honor,
16 is --

17 THE COURT: Not after each one.

18 MS. MORENO: Not after each one. Because I won't
19 know then what the Court's ruling is with respect to my
20 record on cause, and I don't want to waste time if I believe
21 I've established my record.

22 THE COURT: Well, establish your record and ask
23 your questions, and then if you feel that you've got it, then
24 you know, go on to the next one. I don't know what you're
25 really referring to when --

1 MS. MORENO: Well, I just -- if I can offer, my
2 experience is usually -- and that's why I asked; I'm glad I
3 did -- is after a juror -- if I believe I've made the cause
4 record, I would challenge that juror for cause either at the
5 bench with your Honor and after each one, not at the end --
6 that's what I'm saying -- because depending upon the
7 configuration, I could go a shorter period of time or a
8 longer period of time. But if the Court wants me to wait
9 until I'm completely done --

10 THE COURT: If you would. I think it just makes
11 for a much better flow. And I've certainly done it in that
12 fashion for a long, long time, I'll put it that way.

13 MS. MORENO: I'm open to the new experience, your
14 Honor. Thank you.

15 MR. COLE: We just want to mention one thing before
16 our voir dire, which is we've been reflecting since our last
17 hearing on Friday on how to deal with this issue the Court
18 expressed further concern about regarding al-Qaeda, and I
19 know it may come up in voir dire, so I wanted to let counsel
20 know and the Court know that we've decided that we can put on
21 our evidence and our opening without referring to al-Qaeda
22 and that any reference to things in Aden Ayrow's background
23 that he became well-known for can be described without
24 referencing the fact that it was linked to al-Qaeda. In
25 other words, the event can be described without attributing

1 it as a link to al-Qaeda, and so we won't use the words
2 "al-Qaeda."

3 The only possible complication is if -- we don't
4 know what cross-examination will be and how Mr. Bryden may or
5 may not be impeached as to the reasons he knows something or
6 why he believed something happened. It could become
7 difficult for him to explain the basis of his opinions and
8 reasons, but in our case we're not going to --

9 THE COURT: Well, I didn't -- okay.

10 MR. COLE: I just wanted to -- I've been worried
11 that voir dire might start with people not knowing that.

12 THE COURT: I didn't want to get into this kind of
13 an issue.

14 MR. COLE: Sorry.

15 THE COURT: I appreciate -- no, no, I appreciate
16 your bringing it up as a head's up, and -- the defendants
17 aren't here; I didn't want to get into any of the merits --

18 MR. COLE: Okay.

19 THE COURT: -- or substantive issues, not that -- I
20 realize what you're saying; this is not a matter of any great
21 moment, but if we're going to bring up matters like that, I
22 would have the defendants out here. Up until now it's was
23 just kind of a little bit of procedural --

24 MR. COLE: I apologize, your Honor.

25 THE COURT: That's okay. No need to apologize. I

1 think you made your point though. Are there any other
2 matters of that type that need to be addressed? I just --

3 MR. DURKIN: Judge, there is an issue, although I
4 was hoping the defendants would be here now to --

5 THE COURT: Well, then stop. Let's bring the
6 defendants out.

7 MS. MORENO: I read Edmonson v. Leesville, your
8 Honor.

9 THE COURT: Did you see the passage? It was a
10 novel -- it was a novel thought, I must say, and it really
11 resonated.

12 MS. MORENO: It was a landmark case.

13 THE COURT: That opinion came down in '91. I
14 checked it myself. You know, the last time I had any
15 reference to that particular passage was when Justice Kennedy
16 was here himself many, many years ago, and he mentioned that
17 case; he mentioned that -- he mentioned that principle -- and
18 I think that's what it is -- and it really kind of touched
19 home.

20 MS. MORENO: Well, it's -- it was a racial issue.

21 THE COURT: Oh, I know it was a racial issue.

22 MS. MORENO: Very interesting.

23 THE COURT: Yeah, it was a racial issue, but it was
24 within the context of civil litigation.

25 MS. MORENO: That's right.

1 THE COURT: Are we bringing these fellows out?

2 DEPUTY U.S. MARSHAL: Are you ready?

3 THE COURT: Oh, sure, yeah. Counsel, juror number
4 70 on the list, Mr. Hoffmann, is a no-show.

5 THE CLERK: Your Honor, it's number 71.

6 THE COURT: Oh, 71? Strike that. Juror 71, Cooper
7 is a no-show.

8 MS. FONTIER: So Hoffmann is here and Cooper is
9 not; is that correct?

10 THE COURT: That's correct. Counsel, prospective
11 juror number 21 was misspelled on the chart that I got. It
12 should be Cleavenger, not Cleaverger, okay? Okay.

13 (The defendants entered the courtroom.)

14 (Defendant A. Mohamud is being assisted by a Somali
15 interpreter.)

16 THE COURT: Very good. All defendants are present.
17 Good morning, gentlemen. We are about ready to proceed by
18 bringing our jurors in. And, Mr. Durkin, you wanted --

19 MR. DURKIN: Judge, if I could -- Judge, if I could
20 approach, I'd like to tender to you what I've marked Press
21 number 1 with today's date on it. This is an article from
22 this morning's New York Times regarding a suicide bomber that
23 killed two people -- an al-Shabaab suicide bomber that killed
24 two people at the Somali president's villa, and I would
25 direct you to --

1 THE COURT: You would what?

2 MR. DURKIN: I was going to direct you to a
3 particular sentence somewhere on here. I'm sorry, I didn't
4 highlight it, but it mentions -- let's see -- one, two,
5 three, four, five, the sixth paragraph down, it mentions that
6 the attacker is believed to be an operative of the
7 al-Qaeda-linked al-Shabaab insurgent group. I just wanted --
8 we wanted to bring this to your attention. I'm not --
9 certainly not suggesting that we ask the jury whether they
10 heard about the suicide bombing, the al-Shabaab suicide
11 bombing, but it is a concern that could keep raising its
12 head, I assume, throughout the case. I guess maybe just some
13 question about, you know, has anybody read any -- you know,
14 I'd defer to the Court as to how to handle it.

15 THE COURT: Right. Well, you know, as in most
16 high-profile cases or cases that are going to get a lot of
17 attention from the media on an ongoing basis -- and we've
18 certainly had those -- I think all you can do really is
19 periodically admonish the jurors not to expose themselves to
20 any news reporting of any type having anything to do with the
21 case or any subject connected with the case. And as you
22 know, now with what's been going on in Mali and then what
23 more or less bled into Algeria, there's been more discussion
24 in the news lately about insurgent groups and terrorist
25 activities, and that's gaining some international prominence

1 at this point. True, it doesn't involve Somalia, but it's
2 the kind of thing that I would and have already brought up
3 with the potential jurors, that they are not to expose
4 themselves to any newspaper articles or reporting of any kind
5 related to any alleged terrorist activity. I'll certainly
6 continue to do that. I'll key on what's happening in Africa;
7 I mean I'll make general references to Africa, not just
8 Somalia. I'm sure that there are some people in this group
9 that are aware of what's going on and has been going on
10 within the last few weeks and that event specifically in Mali
11 and Algeria. So I think that's the best we can do.

12 It's been my experience that jurors are pretty good
13 following that kind of an admonition. I appreciate you
14 bringing this to my attention. I did note going through the
15 questionnaires that we did have some New York Times readers,
16 and of course this is picked up by the Associated Press --

17 MR. DURKIN: Right.

18 THE COURT: -- so it would be, I assume, reported
19 in a number of different outlets. The other thing I was
20 struck with -- and perhaps you folks know a little bit more
21 about this than I do -- but I was surprised to hear that our
22 State Department has recognized Somalia within the last week
23 or two.

24 MR. DURKIN: Yes.

25 THE COURT: So that's certainly a positive

1 development. I doubt that more than one or two people in
2 this group of prospective jurors would be aware of that or
3 the significance of that. I mean we're all attuned to it,
4 but I think generally the general population is not familiar
5 with those kinds of issues.

6 I was also happy to see that at least one of our
7 prospective jurors indicated on the sheet that she didn't
8 know where the horn of Africa was, she didn't have a clue as
9 to where the horn of Africa was. I suppose if you were to
10 have given this group a geography test, there probably
11 wouldn't be more than a few who could identify, without
12 looking at a map, where the horn of Africa is.

13 Okay. Thank you. Thank you, Mr. Durkin. We'll go
14 ahead and bring our jurors up. I think we're ready to go. I
15 think we have everybody here. Gaby, are you going to take
16 role when they get here as to --

17 THE CLERK: They've taken role in Courtroom 15.

18 THE COURT: Hopefully we won't lose -- all right.
19 The latest is Ms. Cooper did show, so -- she's number 71, so
20 we have all of the individuals now who were instructed to
21 return today. Okay. I think what we can do is we'll seat
22 them in the back, and then when they come in, we'll direct
23 them into their seats.

24 Counsel, please note that when these panel members
25 are taking their seats, 1 through 6 -- now we're just dealing

1 in sequential order, not the randomized order -- but the
2 first six jurors who are with us will take seats 1 through 6
3 in the top row; prospective juror number 7 will be in the
4 first seat closest to the front of the courtroom here, bottom
5 row; and then 7 through 12; then the two end seats, top and
6 bottom, will be the alternate positions. Well, I'm just --
7 for your reference, those individuals will be -- you
8 configured this as it is in our courtroom, didn't you? Yeah.
9 Okay. So seat 13 is the last seat in the top row; seat 14 is
10 the last seat in the bottom row. Then we will start with the
11 two extra seats against the wall on that side of the
12 courtroom; they'll be 15 and 16. And then Mr. Buckner will
13 be in seat 17, which will be the first seat in front of the
14 bar there facing the front of the courtroom. And then we'll
15 proceed all the way across with seat 36 presently occupied by
16 a gentleman, and I think that's it. That's the order, okay?
17 Okay. Let's get our jurors.

18 THE CLERK: They're on their way up.

19 (There was a break in the proceedings.)

20 THE COURT: Good morning again, ladies and
21 gentlemen. Thank you for your promptness. I know you've
22 already been assembling in Courtroom 15, which is actually
23 right next to my courtroom, which is Courtroom 16 on the
24 fifth floor, and so you got a little bit of a preview I think
25 of what the courtroom will look like in which we're going to

1 try this case. And so I thank you for your promptness this
2 morning.

3 Let me again tell you what we're going to be doing
4 today. In just a moment or two, I'm going to ask that 36 of
5 you take assigned seats in the jury box and in the front row
6 in front of the bar in the back of the courtroom, and at that
7 point I'm going to ask some general questions of the first 36
8 of you.

9 Now, even though I won't be directing my questions
10 to others -- and there will be approximately, oh, a dozen or
11 so of you remaining in the back of the courtroom -- I would
12 ask that all of the panel members who remain in the back of
13 the courtroom behind the bar please listen very carefully to
14 everything we're doing today, all the questions that are
15 asked and the answers that are given. I will be starting
16 this process, counsel are privileged to participate in it as
17 well, but we want to -- we want to make sure that all of you
18 remaining panel members are tracking with us so that if you
19 are asked to take a seat amongst the first 36 panel members,
20 that is, to join this 36-pack, or the group we're initially
21 working with, that we can hit the ground running with you,
22 that you will have been listening to everything that was said
23 in the courtroom, and if there were any questions or answers
24 or other comments made that caused you any concern or you
25 feel we need to know, then obviously it would be your

1 obligation to let us know about that concern. So we
2 appreciate you keeping close attention to the proceedings as
3 we proceed. Okay. That's pretty much it.

4 We'll take a midmorning break, about 15 minutes;
5 sometime between 10:30 and eleven o'clock, we'll break for
6 about 15 then, then we'll resume and then go the balance of
7 the morning. We may go into the noon hour if doing so would
8 allow us to break at a convenient time, and then we'll break
9 for lunch after that, after our morning session, and we'll
10 take something on the order of an hour to maybe an hour and
11 15 minutes for our break in the middle of the day, our noon
12 recess, and then pick up about 1:30 -- I'll give you the
13 precise time a little bit later today -- and then we'll go
14 into the afternoon continuing on with the process of jury
15 selection. And ultimately today is our plan to actually have
16 our jurors identified, the 12 regular jurors and three
17 alternates jurors. So that is the plan. Ultimately we would
18 start the case tomorrow with opening statements and then
19 proceed with the evidence thereafter.

20 We all very much appreciate the time you took in
21 filling out these questionnaires. They help us immensely in
22 focusing our follow-up questions with you, and they really do
23 shorten the process for today. I think it's likely that one
24 or more questions will be directed to each of you. There may
25 be a few of you who are not asked any questions; if that be

1 the case for anyone, please do not feel as though you're
2 being ignored or disrespected in any way. It's just that
3 there were no questions that needed to be directed to you.

4 So I think that's -- I think that's pretty much it.
5 I think the next in order of business, ladies and gentlemen,
6 is to call you and to have you take your assigned seats, your
7 designated seats, the first 36 of you. This has been a
8 randomized list, by the way; we proceed with a randomized
9 list when we're calling each of you to take these seats. So
10 Mr. Bilse or Bilse -- how do you pronounce your name, sir?

11 PROSPECTIVE JUROR: Bilse.

12 THE COURT: Mr. Bilse, if you'd come forward,
13 please, and take the first seat in the top row closest to the
14 front of the courtroom. Ms. Farkas, yes, if you'd come
15 forward, please -- you're the next prospective juror -- and
16 take your seat next to Mr. Bilse. Mr. Wease next. Ms. Lee
17 will be taking seat number 4. Ms. Young and Mr. Channell, if
18 you'd come forward, please. Okay. We have seats 1 through 6
19 occupied now.

20 Ms. Faith, if you'd please come forward and start
21 the bottom row here, the seat closest to the front of the
22 courtroom. Thank you. Ms. Flores, if you'd come forward and
23 take the seat next to Ms. Faith. Mr. Sciacqua -- I hope
24 that's a correct pronunciation. It is? All right, sir. If
25 you'd come forward, take the ninth seat there. Mr. Johnson

1 would be next. Ms. Meza, next. Ms. Lopez would be taking
2 the 12th seat, Ms. Meza first and then Ms. Lopez. Thank you.

3 And then Ms. Smith, if you would please come
4 forward. Ms. Smith, I'd like you to take the seat in the top
5 row there, the vacant seat in the top row in the jury box.
6 And then Ms. Salinas, please, the bottom row, vacant seat in
7 the bottom row. Thank you. Mr. Tyndall. Mr. Tyndall, may I
8 ask you to take -- there are two seats against the wall here
9 in front of the bar. Take the one closest to the jury box,
10 please. And Mr. Breier, if you would come forward and take
11 the seat just next to Mr. Tyndall.

12 Mr. Buckner, would you please take the first seat
13 facing the front of the courtroom right against the wall
14 there. Ms. Murguia -- I'm sorry, Gustavo Murguia. I do
15 apologize. You know, I'll tell you why. I think I owe you
16 an explanation. One of my colleagues on the Ninth Circuit is
17 named Mary Murguia, and -- she's not even from California,
18 but I just associate the name Murguia with Mary Murguia and
19 her twin sister. And I'm sure that's a very inadequate
20 explanation that you're not going to appreciate, but it's the
21 best I can do under these circumstances.

22 Ms. Free, if you would come forward, please. Mr.
23 Bristow next. Ms. Cleavenger. Ms. Freni. Mr. Roubidoux.
24 Ms. Delaney. Ms. Hernandez. Ms. Ramirez. Ms. Fierro. Ms.
25 Fierro, may I ask you to take the first seat across the aisle

1 there. That's it right there. Thank you. Ms. Stahl. Mr.
2 Crowell. Mr. Brenzel. Mr. Dominguez. Mr. Merkin.
3 Mr. Evans. Mr. Mapanao.

4 PROSPECTIVE JUROR: May I talk to you a minute,
5 Judge?

6 THE COURT: Well, Mr. Mapanao, I'm going to ask
7 that you take your seat for now, and then we'll have a
8 chance. Thank you, sir. Mr. Adams. And Ms. Clark. Okay.
9 Mr. Mapanao, you need to see me; is that true?

10 PROSPECTIVE JUROR: Yes, your Honor.

11 THE COURT: Hold on just right where you are,
12 please. Counsel, would you please come forward.

13 (Following is a sidebar conference.)

14 PROSPECTIVE JUROR: Sorry, I should have told you
15 this yesterday. I had my -- I have a medical issue. My wife
16 gets a kidney transplant and is legally blind and --

17 THE COURT: Would you like me to read this?

18 PROSPECTIVE JUROR: Yes, sir, I have all kind of
19 appointment.

20 THE COURT: Okay. Hold on. Let me just take a
21 look at this. Are you saying --

22 PROSPECTIVE JUROR: And the other one is the
23 nephrologist.

24 THE COURT: Nephrology?

25 PROSPECTIVE JUROR: Nephrology, getting a kidney

1 transplant.

2 THE COURT: Is she scheduled for it?

3 PROSPECTIVE JUROR: 2001.

4 THE COURT: Oh, she already had it. Is she having
5 trouble?

6 PROSPECTIVE JUROR: No, just the eyes. She become
7 blind, become blind, and that's where the -- where the
8 medical issue is.

9 THE COURT: Apparently she has an impaired visual
10 field. Does she have glaucoma? Does she --

11 PROSPECTIVE JUROR: Yes. No, it's not. It's -- it
12 has something to do with the medicine, the CHAMPUS medicine.

13 THE COURT: Are you her caregiver?

14 PROSPECTIVE JUROR: Yes, I am the only one in the
15 house.

16 THE COURT: Do you work as well?

17 PROSPECTIVE JUROR: I'm retired.

18 THE COURT: You're retired, so you're --

19 PROSPECTIVE JUROR: I should have said that when I
20 turn in my paper. I'm 70 years old and I'm diabetic.

21 THE COURT: Okay. I'm going to excuse you,
22 Mr. Mapanao and thank you for bringing this to our --

23 PROSPECTIVE JUROR: I sure appreciate that.

24 THE COURT: -- to our attention. And I wish you
25 and your wife the best. And we'll call somebody else to --

1 PROSPECTIVE JUROR: She should be -- she just
2 didn't like it when I came home yesterday and I told her I
3 wish could get away with it; I like to stay.

4 THE COURT: You want to get out of the house for a
5 little while?

6 PROSPECTIVE JUROR: Sure. Thanks a lot.

7 THE COURT: All right, sir. Thank you. All right.

8 MR. DRATEL: Are you going to consolidate the
9 people in the back so they can --

10 THE COURT: It doesn't make any difference.

11 MR. DRATEL: Well, it does to us in the sense --
12 not going to know who they are, it's very difficult to
13 determine the strikes if they don't get -- you know, when you
14 get --

15 THE COURT: I don't understand what you're saying
16 here.

17 MR. DRATEL: In other words, if they answer
18 questions --

19 THE COURT: No, no, no, they're not -- I'm not
20 having -- they're not going to respond at all at this point.
21 The only time they'll say anything is if they're called into
22 the box. If I'm asking a general question, it's only of the
23 first 36.

24 MR. DRATEL: If they're called into the box, they
25 can be number 36 or they can be --

1 THE COURT: Well, it depends who they're
2 substituting for. Okay.

3 MR. DRATEL: Okay. That makes a big difference in
4 terms of our ability to then voir dire when they come in the
5 box.

6 THE COURT: No, not really. Why does it --

7 MR. DRATEL: Because if they're juror number 1,
8 then we have to know whether to exercise a strike or not. If
9 they come in at the end and the process is over, we have not
10 voir dired them at all and don't know --

11 THE COURT: You'll have an opportunity -- you'll
12 have an opportunity to voir dire them at some point. It's
13 not as --

14 MR. DRATEL: Okay.

15 THE COURT: How else could you exercise your
16 strikes if you didn't --

17 MS. MORENO: Exactly.

18 THE COURT: Trust me. Trust me.

19 MR. DRATEL: Okay.

20 MS. MORENO: Thank you, your Honor.

21 (Sidebar conference concludes.)

22 THE COURT: Okay. Mr. Mapanao, ladies and
23 gentlemen, has been excused for a significant and justifiable
24 reason, and so we're going to call the next individual on the
25 randomized list to substitute for Mr. Mapanao.

1 THE CLERK: Ms. Alise.

2 THE COURT: Ms. Alise, if would you would please
3 take the seat vacated by Mr. Mapanao. Okay. Ladies and
4 gentlemen, once again, I'm going to proceed at this point by
5 asking general questions only of the first 36 of you who have
6 taken your assigned seats, what we call -- what I refer to as
7 a 36-pack.

8 Now, these questions are not directed to any of the
9 remaining members of the jury panel, as I've already
10 explained, but as I've already explained, please listen very
11 carefully to what we're doing because if your name is called
12 to substitute for someone, just as what happened with Mr.
13 Mapanao, then we need to make sure that you've been tracking
14 with us and you know what our questions have reference to,
15 you know what the areas of concern are. And so we'll proceed
16 at this point. Once again, questions just directed to the
17 first 36 of you in your assigned seats.

18 I'm going to start off with that question I asked
19 two or three times yesterday. It's really the most
20 significant question I can ask you, ladies and gentlemen.
21 Each side is entitled to have a fair and unbiased jury in
22 this case, and if for any reason you now think that you
23 cannot be a fair and unbiased juror in this matter, I would
24 like you to raise your hand. I see no hands raised in the
25 jury box, I see no hands raised on either side of the

1 courtroom in the front row. Okay. Very well.

2 You know, going through the -- going through the
3 questionnaires and looking at the individual responses was
4 certainly informative, and it obviously and predictably is
5 the case that many of you have had some contact with the
6 government, the United States government, in the past or
7 perhaps even presently through the military or through
8 employment. I'll be asking these questions individually of
9 you or of most of you as I address you individually, but if
10 there is anyone here who because of their association or
11 connection with the United States government, past or
12 present, either in a military context or a civilian
13 employment context or for any other reason who feels that he
14 or she is leaning to one side or the other, specifically
15 would favor the government in this case because of that
16 affiliation, because of that connection, would you please
17 raise your hand if anyone feels that. Anyone in the jury
18 box? I see no hands raised. And in the back of the
19 courtroom? When I say the back of the courtroom, I'm meaning
20 for those of you seated in your assigned seats in front of
21 the bar here. I see no hands raised.

22 And we'll be proceeding this way, ladies and
23 gentlemen. In effect, if you do not give me an affirmative
24 response by raising your hand, each and every one of you is
25 communicating individually to me that your response is

1 negative, and so it allows us to proceed much more
2 expeditiously.

3 That opens up another more general question, which
4 is this: If any of you have ever had a particularly positive
5 experience with the United States government or any agency of
6 the United States government or such a negative experience
7 with the government or any agency of the government such that
8 you could be influenced by that in this case, would you
9 please raise your hand. I've already mentioned the
10 employment context, the military context. Perhaps you've had
11 a bit of a run-in with the IRS at some point in the past,
12 you've been unfairly audited; you've been stopped at a border
13 patrol checkpoint and treated unreasonably; or there have
14 been -- there's been some immensely positive experience that
15 you've had; anything either particularly positive or negative
16 that could influence you in this case? If so, would you
17 please raise your hand at the present time. Anyone in the
18 jury box who would have an affirmative response either way on
19 that? I see no hands. How about in the back of the
20 courtroom for those of you in your assigned seats in front of
21 the bar? I see no hands raised. Okay.

22 A subject I touched on yesterday, ladies and
23 gentlemen, involved the credibility or believability of
24 witnesses, and you are the judges of the credibility or
25 believability of witnesses who testify in this case. I

1 indicated to you that there were several standards or
2 criteria by which you would be evaluating the credibility,
3 believability, of witnesses' testimony; I listed them off for
4 you in general terms: The manner in which a witness
5 testifies, the character and quality of that testimony, the
6 demeanor, the attitude of the witness while testifying, any
7 prior inconsistent statements that might have been made by a
8 witness that comes into evidence, any prior consistent
9 statements that might have come in to evidence, and, you
10 know, anything that bears upon the reasonableness, the
11 credibility of witnesses beyond that is certainly something
12 you could take into account. I also mentioned to you that
13 this -- this list of factors, these criteria, apply to all
14 witnesses, all witnesses, whether someone's affiliated with
15 one side or the other or not, whether someone's in law
16 enforcement or not, whether someone's an expert witness or
17 not; you apply the same standards. You may weigh them
18 differently ultimately, but you apply the same standards.

19 Now, focusing on the law enforcement part of this,
20 as I was going, you know, through the questionnaires and
21 based on prior experience having dealt with literally many
22 hundreds of juries over the past, it is the case that some
23 people feel that a law enforcement officer's testimony is
24 entitled to greater weight than the testimony of nonlaw
25 enforcement officers or nongovernmental witnesses simply

1 because of their position in law enforcement or affiliated
2 with a particular governmental agency, and I think there were
3 a few people -- I think there were a few people who indicated
4 on their questionnaire responses that they might fall into
5 that category, that they would be giving a law enforcement
6 officer -- well, let's just get it down to this case,
7 specifics to this case -- perhaps an FBI agent, the testimony
8 of such a person greater weight simply because of that
9 person's occupation.

10 If there is anyone here who feels that that is
11 their position on this question -- hold on -- I'll get to
12 you. I see you. If there's anyone here who feels that a law
13 enforcement officer's testimony is more credible simply
14 because of the fact that they're in law enforcement, would
15 you please raise your hand. In the jury box? I see no hands
16 raised. Okay. We did have -- we did have someone raise his
17 hand. Sir, would you state your last name, please?

18 PROSPECTIVE JUROR: Roubidoux.

19 THE COURT: All right. Mr. Roubidoux, I think I
20 saw that on your questionnaire as well. That is your feeling
21 apparently?

22 PROSPECTIVE JUROR: Yes, it is.

23 THE COURT: Okay. Is there anyone else who feels
24 as Mr. Roubidoux does, simply because someone is in law
25 enforcement, they're more inherently truthful? I see no

1 other hands raised. Are you in law enforcement?

2 PROSPECTIVE JUROR: No, sir. I'm a state employee.

3 THE COURT: Sorry?

4 PROSPECTIVE JUROR: I'm a state employee. I work
5 with the law enforcement on a daily --

6 THE COURT: Are you the Caltrans worker.

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All right. So you're the Caltrans.

9 You know, you had an interesting response in your
10 questionnaire; you indicated that you work with Caltrans, and
11 obviously we all know that law enforcement in the form of the
12 California Highway Patrol will provide some support for
13 Caltrans as Caltrans workers are in the field sometimes; I'm
14 sure you appreciate that support. You indicated in your
15 questionnaire that their instructions, their directives to
16 you have proven to be reliable.

17 PROSPECTIVE JUROR: That's correct.

18 THE COURT: And which is certainly understandable
19 because they're out there to offer protection and all. Is it
20 a result of that experience and your working with the
21 California Highway Patrol that you feel law enforcement
22 officers generally are more truthful than nonlaw enforcement
23 officers?

24 PROSPECTIVE JUROR: Besides that I have good
25 friends that's a deputy sheriff here in San Diego.

1 THE COURT: Okay. And so you've not been in law
2 enforcement yourself?

3 PROSPECTIVE JUROR: That's correct.

4 THE COURT: But as you sit here right now, do you
5 feel that as a group, law enforcement officers would be more
6 likely to tell the truth than you or me or any of the
7 attorneys --

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: -- in this -- okay. Well, I'm not
10 going to take any more time with you, Mr. Roubidoux. You've
11 got a very, very firm position there. And, ladies and
12 gentlemen, it just is the case -- and I'm glad to be able to
13 use Mr. Roubidoux as an example -- it just is the case that
14 we will from time to time encounter someone who has this
15 feeling that elevates law enforcement to such a level that
16 they think that when they take the stand and testify, that's
17 it, that's gospel. And we can't start with that premise. As
18 one of your number put it -- one of the best answers I've
19 ever seen in connection with that question on the
20 questionnaire, question 50 -- the answer of the individual
21 was if that were the case, if law enforcement officers were
22 more truthful than other people, then why would we need
23 juries? And I thought about that, and I thought it was an
24 enlightened response.

25 Mr. Roubidoux, I really do thank you for your

1 candor. And you do -- you do important and dangerous work
2 out there and stay safe. I'm going to excuse you for cause
3 and thank you for your time and service.

4 THE CLERK: Mr. Michael Todd.

5 THE COURT: Mr. Todd, if you'd come forward and
6 take the seat just vacated by Mr. Roubidoux there, we would
7 appreciate it. Mr. Todd, you've heard what I've had to say
8 thus far?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Can you be a fair and impartial juror
11 if selected in this case?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. I've got as far as the question
14 relating to credibility of witnesses and law enforcement
15 officers. Would you use the same standards for all witnesses
16 regardless of whether they're law enforcement or not?

17 PROSPECTIVE JUROR: Yes, I would.

18 THE COURT: Okay. Mr. Tyndall?

19 PROSPECTIVE JUROR: Far as I know.

20 THE COURT: I'm going to get that microphone over
21 there to you so everyone can hear you.

22 PROSPECTIVE JUROR: As far as I remember, my
23 response was "not always," but now I'm trying to think what I
24 meant.

25 THE COURT: Yeah, I was trying to figure that out

1 as well.

2 PROSPECTIVE JUROR: When I say there's no
3 credibility, can you say it one more time so I --

4 THE COURT: Believability.

5 PROSPECTIVE JUROR: Believability. In terms in
6 terms of a law enforcement issue --

7 THE COURT: No, no. What I'm --

8 PROSPECTIVE JUROR: I got confused.

9 THE COURT: Let me try explain. There will be
10 witnesses called to testify in this case.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Some of them will be affiliated with
13 law enforcement --

14 PROSPECTIVE JUROR: Okay.

15 THE COURT: -- federal law enforcement --

16 PROSPECTIVE JUROR: Okay.

17 THE COURT: -- such as one or more FBI agents. And
18 there may be other people as well who are affiliated with one
19 law enforcement agency or another. If a law enforcement
20 officer takes the stand and begins to testify on a contested
21 issue, something that's in dispute ultimately where the
22 evidence is disputed --

23 PROSPECTIVE JUROR: In relationship to the
24 enforcement of the issue.

25 THE COURT: Does it relate to enforcement of the

1 issue?

2 PROSPECTIVE JUROR: That's the law enforcement
3 officer's or duty. In other words -- I guess that's where I
4 got confused. If he was questioned about the enforcement
5 policy or issue that he was involved with, he's trained more
6 highly than a person that isn't --

7 THE COURT: Well, no, no. You raise a very -- you
8 raise a very valid point. You raise a very valid point.
9 Because one of the criteria for assessing the believability
10 of a witness, whether that witness is a law enforcement
11 officer, whether that witness is an expert perhaps in law
12 enforcement or in some other area not involving law
13 enforcement, is the ability of the witness to see or hear or
14 know the things testified to. So, for example, taking it to
15 a case having nothing to do with the facts of this case, if
16 you have a law enforcement officer, a traffic officer, who's
17 trained to investigate traffic accidents, and this case isn't
18 a criminal case, it's a civil case involving an automobile
19 accident and a claim for damages, and you have an officer
20 take the stand who was responsible for investigating the
21 accident, and that officer has made certain conclusions
22 regarding the accident, and those conclusions are disputed by
23 the testimony of someone who does not have the training of a
24 law enforcement officer, a traffic investigator --

25 PROSPECTIVE JUROR: Mean a person on the street

1 that observed it.

2 THE COURT: Exactly. Then that's a case where as
3 you're being instructed on the credibility of witnesses,
4 including the factor you're to take into account the ability
5 of that officer to see or hear or know the things testified
6 to, i.e., training, and that officer's also an expert witness
7 with specialized training and you're instructed that you can
8 take into account that witness's testimony regarding the
9 experience and the training that the individual has received,
10 then what you're going to do is you're going to weigh those
11 particular criteria against -- or for each of those two
12 witnesses, the law enforcement officer and the pedestrian
13 standing on the street, and those are going to be plus
14 factors for the investigating officer. You may still
15 disagree with the conclusions of the investigating officer,
16 but at least you're taking that training, that experience,
17 the ability to see or hear or know into account in an
18 appropriate way. Do you understand what I'm saying?

19 PROSPECTIVE JUROR: Yes, but that particular case
20 was put in front of us, at that point in time we can make a
21 decision who's more credible.

22 THE COURT: Absolutely. That's your job.

23 PROSPECTIVE JUROR: Right.

24 THE COURT: So my question is to you, Mr. Tyndall,
25 and to all the other prospective jurors here, if you're

1 approaching this case with the mindset that people in law
2 enforcement are just more inherently truthful than people who
3 are not in law enforcement --

4 PROSPECTIVE JUROR: I believe my response was "not
5 always."

6 THE COURT: Your response was "not always." But my
7 question to you is do you believe that; do you believe that
8 people in law enforcement are more truthful than people who
9 are not in law enforcement?

10 PROSPECTIVE JUROR: Well, if you put it that way, I
11 would have -- I would have to say no, taking it from a human
12 nature standpoint. In other words, you know, a credible
13 witness may tend to twist it, a credible law enforcement
14 officer may have not observed or may not remembered what he
15 saw and went ahead and said something anyway. I guess on
16 behalf of that, I would have to say no.

17 THE COURT: You're really struggling with it,
18 aren't you?

19 PROSPECTIVE JUROR: Yeah, I --

20 THE COURT: I know it's hard for you to get to that
21 point of neutrality, isn't it?

22 PROSPECTIVE JUROR: That's why I wanted to -- why I
23 put "not always" because I was a little confused about -- and
24 that's what I was leaving in the area of no, not all of them
25 tell the truth.

1 THE COURT: You know, some of these questions in
2 the questionnaire, you know, they're very, very broadly based
3 questions and they're not intended to elicit finely spun -- a
4 finely spun analysis as to all possible scenarios that could
5 arise. They're general questions, and if you give a general
6 answer, you're giving a general answer but knowing that there
7 would be so many variations on that answer depending upon the
8 circumstances, and many of you answered that question in that
9 vein. But, Mr. Tyndall, if you're really straining, if
10 you've elevated law enforcement to a point where --

11 PROSPECTIVE JUROR: No, I have not, no.

12 THE COURT: Let me finish what I was going to say.
13 -- where it's going to be difficult for you to look at a law
14 enforcement officer and not give that testimony extra weight
15 simply because of that person's position, that person's
16 status as law enforcement, then we need to know that. If you
17 can look at the law enforcement officer as any other witness,
18 just as truthful or nontruthful as any other witness
19 potentially, and judge the believability of the -- of the
20 testimony on the factors that you'll be instructed about,
21 then that's fine, then you can remain with us here. But I
22 can't spend too much more time on this. We're spending a lot
23 of time on this issue just with you, so you search your own
24 thought process or heart or let us know right now if you feel
25 that you can abide by that or you just feel that for whatever

1 reason, you're struggling with this -- with this principle.

2 PROSPECTIVE JUROR: Well, I would at this point in
3 time accept the requirement, whatever, that I have to be
4 equal of those of that situation. I wasn't sure if I had to
5 be. I thought an expert witness -- I never been on a jury,
6 so I really don't know -- an expert witness versus the guy on
7 the street. I mean am I being biased towards the expert
8 witness or the guy on the street? I guess if you had asked
9 me that way, yeah, I would probably, you know, say it again.
10 But there again, it would depend on the evidence on both
11 sides, and then I can evaluate it.

12 THE COURT: Is there anyone else here who's
13 struggling with this issue as Mr. Tyndall is? If so, would
14 you raise your hand. This is something we just have to, you
15 know, discuss and then move on. Typically, ladies and
16 gentlemen, I present the question as I presented it. I
17 usually do it in two parts: Is there anyone here who feels
18 law enforcement officers are inherently more believable than
19 other people, than the rest of us, and the vast majority of
20 people say no, and they can fairly judge the ability of a law
21 enforcement officer to testify as other people would. There
22 are people, however, encountered from time to time who feel
23 that law enforcement officers, that's it, they're more
24 truthful than the rest of us, and I'm going to give their
25 testimony extra weight regardless of what it might be.

1 Sometimes that comes because of a connection between that
2 person and law enforcement; usually that person has been in
3 law enforcement or is the spouse of someone in law
4 enforcement, they've been around law enforcement, and it's
5 difficult for them to treat law enforcement officers as they
6 would anyone else. That's just the first side of it.

7 The other side I typically ask is is there anyone
8 here who feels that law enforcement officers are less
9 truthful than other people because of perhaps a bad
10 experience they've had with law enforcement, and you can plug
11 in any number of scenarios there, and every once in a while,
12 somebody will raise a hand and say that's me, I was falsely
13 arrested and, you know, or somebody, I was subject to a
14 circumstance where a law enforcement officer was less than
15 truthful, and I can't get that out of my mind. Okay. Thank
16 you for your candor, you're not -- this is not a case that
17 you should be sitting on. So that's the second part of what
18 I typically explore with prospective jurors.

19 Mr. Tyndall, I'm going to excuse you because I
20 don't want you to struggle with this one. It seems as though
21 you are. I get the impression that it's going to be
22 difficult for you to follow the Court's instructions on this
23 particular issue. I thank you for your time and service.
24 I'm going to ask that you return to the jury lounge at this
25 time.

1 We will call Ms. Boggess or Boggess. If you'd come
2 forward, please, Ms. Boggess. Thank you. Okay. Ms.
3 Boggess, you've heard all of my instructions and the
4 questions I've asked so far?

5 PROSPECTIVE JUROR: Yes, I have heard them.

6 THE COURT: Can you be a fair and impartial juror
7 if selected?

8 PROSPECTIVE JUROR: Yes, I believe I can be a fair
9 and impartial juror.

10 THE COURT: Okay. You've seen us spend a lot of
11 time on this issue involving credibility of law enforcement
12 officers. Would you be able to judge the credibility,
13 believability, of a law enforcement officer's testimony as
14 you would for any other witness?

15 PROSPECTIVE JUROR: Yes, I believe I would be able
16 to do that.

17 THE COURT: Okay. Let me get back to this issue
18 then and -- with the rest of the prospective jurors seated in
19 their assigned seats. If there is anyone here who feels
20 that -- that law enforcement officers, including federal law
21 enforcement officers, people associated with the FBI and
22 other such agencies, are inherently more truthful or less
23 truthful than others who are not in law enforcement, would
24 you please raise your hand at the present time. Anyone in
25 the jury box feel that way, please let me see your hand. And

1 I see no hands. Anyone in the front row of the bar on my
2 right side? I see no hands. On the left side I see no
3 hands. All right. Very good. We'll move away from this
4 subject, but if anyone feels upon further reflection that
5 this particular area may be a problem, then please let me
6 know. Okay.

7 I wanted to raise an issue that I'll be raising
8 from time to time, I touched upon it yesterday, and it
9 involves media accounts, news accounts of this case, although
10 I think that won't be an issue in the case; there may be an
11 article or two during the course of the trial. Obviously
12 you've been instructed that you must not expose yourself to
13 any such article or information, extraneous information.
14 I've also requested that you isolate yourselves from all
15 media reporting, news reporting of any kind having anything
16 to do with the political situation in any of the African
17 countries. I know that we've seen or been made aware of
18 certain events happening in Mali and Algeria and a few other
19 north African countries. Somalia may be in the news from
20 time to time. It's very important that we not expose
21 ourselves to any reporting on any of these issues having to
22 do with political upheaval or action taking place, activities
23 taking place in any of the African countries; I'll just take
24 it to that entire continent. You see a newspaper when --
25 you're flipping through the newspaper and you begin to see a

1 headline that may have something to do with this case, don't
2 read it. Set it aside if you want to see it later after the
3 case is over. If you're watching television or you're -- you
4 click on an Internet story having something to do with a
5 subject that is even remotely connected to this case, turn
6 the channel or don't click on the link or whatever it happens
7 to be.

8 If there is anyone here who feels that he or she
9 would not be able to follow that instruction, would you
10 please raise your hand at the present time. I see no hands
11 raised.

12 I would -- I would rely on each and every juror in
13 this case that if something did come to their attention
14 inadvertently -- if, for example, they were reading an
15 account of an issue, an event, a situation and you got
16 partway into it, I would rely on you to, as I say, set it
17 aside. But if in fact something came to your attention
18 inadvertently that you simply did not have any opportunity to
19 ignore, I would ask that you advise -- you advise me if
20 you're a juror on this case so that at least I could address
21 it with counsel and we could make sure that it would have no
22 effect on you sitting -- continuing to sit as a fair and
23 impartial juror. Okay.

24 I want to bring up another general principle,
25 sympathy, prejudice, public opinion, possible punishment;

1 those are things that you may not consider in determining
2 whether the defendants, or any of the defendants, are guilty
3 or not guilty of the charges in this case. Sympathy,
4 prejudice, public opinion, possible punishment. Set them
5 aside. Do not be influenced by them in any way.

6 If there is anyone here who feels that he or she
7 could be influenced, would consider sympathy, prejudice,
8 public opinion, and possible punishment, would you please
9 raise your hand at this time. I see no hands raised. Okay.

10 What I'd like to do is turn to the questionnaires
11 at this point. I'll have a few other general questions for
12 you as we go through this process, ladies and gentlemen, and
13 I'll reserve those for a little bit until I can get a little
14 bit more of an appreciation for each of you and how you might
15 have responded on these questionnaires, so it's about time we
16 started this process.

17 Mr. Bilse, let me -- Bilse let's start with you,
18 sir. We'll get that microphone to you. All right, Mr.
19 Bilse. Sir, how long have you been a traffic engineer for
20 the City of Carlsbad?

21 PROSPECTIVE JUROR: Five years.

22 THE COURT: Okay. Do you supervise any people
23 there?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Approximately how many?

1 PROSPECTIVE JUROR: Three.

2 THE COURT: Okay. Have you been in traffic
3 engineering and traffic planning basically your whole life,
4 so to speak, except for the time you were in aerospace?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Okay. And your spouse or significant
7 other is an urban planner, and just a little more information
8 about that, sir.

9 PROSPECTIVE JUROR: She does environmental impact
10 reports for land development.

11 THE COURT: Okay. Very good. You indicated that
12 you had a -- you were a victim of crime at some point in the
13 past, and someone was apprehended in connection with that
14 matter. You came into contact I assume with law enforcement
15 individuals in connection with that case at some point?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Was that -- was that contact a positive
18 contact for you?

19 PROSPECTIVE JUROR: It was neutral I guess. It was
20 very quick.

21 THE COURT: Okay. Anything about that contact with
22 law enforcement that would incline you to favor one side or
23 the other in this case?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Okay. Thank you. If you could pass

1 the microphone to Ms. Farkas. Ms. Farkas, I was looking at
2 that part of the questionnaire which relates to your views of
3 the Muslim or Islamic faith, and I had the impression that
4 your primary concern was what some people at a very early age
5 may be taught in some particular schools. Does that -- does
6 that color your thinking generally about the entire Muslim or
7 Islamic faith?

8 PROSPECTIVE JUROR: No, your Honor.

9 THE COURT: What did you have reference to? Were
10 you talking about schools where -- where kids are instructed
11 in Wahhabism or --

12 PROSPECTIVE JUROR: Certain facets in the Muslim
13 faith, they do instruct children that --

14 THE COURT: Well, you're generalizing once again
15 that --

16 PROSPECTIVE JUROR: I'm generalizing.

17 THE COURT: Yeah, there may be a particular
18 group --

19 PROSPECTIVE JUROR: Right.

20 THE COURT: That will instruct kids in a
21 particular -- but do you extend that to the entire faith?

22 PROSPECTIVE JUROR: No, of course not. I think
23 generally Muslims are good people, but I am very fearful that
24 a certain facet of them can be trained that way and that they
25 believe that Americans are bad, and that's my fear about

1 that.

2 THE COURT: Okay. And you feel that the answers
3 you gave that -- at least to the extent that you were
4 critical -- were answers that were reserved just for that
5 relatively small --

6 PROSPECTIVE JUROR: Right.

7 THE COURT: -- percentage or small group --

8 PROSPECTIVE JUROR: Correct.

9 THE COURT: -- that teach things that you're not --
10 that you have difficulty with?

11 PROSPECTIVE JUROR: Correct.

12 THE COURT: All right. You seem to have
13 substantial contacts with Muslims; in going through the
14 questionnaire, you've had contact in organizations and you
15 socialize with them as well. Is that correct?

16 PROSPECTIVE JUROR: Correct.

17 THE COURT: All right. And is there any particular
18 reason that you've come into contact with Muslims in
19 different contexts?

20 PROSPECTIVE JUROR: Well, San Diego is a very
21 versatile area and has a lot of different people, and as far
22 as, you know, my dry cleaner, taxi drivers, people just
23 generally. And I like different people, I like cultural
24 people, and I like to communicate with them, and I like to
25 find out where they're -- what they're about and what their,

1 you know, their families are about, and I like to talk to
2 them.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: And I find them interesting,
5 and so that's why I get to know them. And I've traveled
6 quite a bit, so --

7 THE COURT: Do you have any doubt as to your
8 ability to be completely fair in this case?

9 PROSPECTIVE JUROR: No, not at all.

10 THE COURT: You indicated that you think that in
11 connection with the United States's response to terrorism
12 that -- that the United States is being far too fair; what do
13 you mean by that?

14 PROSPECTIVE JUROR: Well, I think we need to be a
15 little tougher. I think that they -- they let a lot of
16 people get away with a lot of things.

17 THE COURT: Who is they?

18 PROSPECTIVE JUROR: The government, yes, sir.

19 THE COURT: The government? And what do you --
20 flesh that out for me a little bit in terms of --

21 PROSPECTIVE JUROR: Well, of course I'm not in a
22 position to do that because I'm not in a position to be
23 anyone that's going to take care of anything that way, but I
24 think a lot of Americans feel that we need to be a little
25 stronger in our positions. That's just a personal opinion.

1 THE COURT: Stronger in what types of positions?

2 PROSPECTIVE JUROR: Well, maybe in immigration,
3 maybe in not giving in to any demands, just being a little
4 tougher all the way around.

5 THE COURT: So politically you're talking about
6 conservative positions --

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: -- such as immigration and others?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: And when you say we're being far too
11 fair, I still -- most people would say that that's a good
12 thing, being as fair as you possibly can; but you seem to
13 feel that we're just being, what, too docile or too tolerant
14 of certain things or --

15 PROSPECTIVE JUROR: Uh-huh.

16 THE COURT: Yes?

17 PROSPECTIVE JUROR: Uh-huh.

18 THE COURT: You have to answer audibly yes or no.

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: But would any of those feelings, any of
21 those feelings you might have with respect to political
22 issues of the day in any way affect your thinking in a case
23 such as this?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Are you clear about that?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: All right. You feel, once again, even
3 though we've been talking about these things and you --
4 politically you're -- you have some criticism of the
5 government, that none of that criticism, none of those
6 feelings would in any way impair you in this case.

7 PROSPECTIVE JUROR: I don't believe so.

8 THE COURT: Okay. All right. Thank you, Ms.
9 Farkas. Mr. Wease?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Good morning to you, sir.

12 PROSPECTIVE JUROR: Good morning.

13 THE COURT: Once again, on your responses to this
14 one particular area, you seem to be neutral on the Muslim or
15 Islamic faith, but, once again, you have strong feelings
16 about radicalists and extremists. And so the question I
17 would ask you would be the same question I had for
18 Ms. Farkas: Whatever your views on radical elements of
19 Islam, could you fairly judge the evidence in this case? The
20 charges in this case are very discrete charges; the charges
21 are that these gentlemen, and each of them, provided material
22 support to terrorists, a foreign terrorist organization,
23 and/or conspired to do so. The organization is al-Shabaab,
24 as I mentioned yesterday. The fact that al-Shabaab is a
25 foreign terrorist organization and certified as such is not

1 even in dispute in this case. The question is whether or not
2 the government can prove that material support by the
3 defendants were provided to this organization. That gets us
4 away from concerns I think Ms. Farkas had, concerns you may
5 have about what is taught in some small percentage of schools
6 and what some radical extremists actually do. Can you
7 separate the two in your mind?

8 PROSPECTIVE JUROR: Yes, I'm sure I can.

9 THE COURT: Okay. No doubts about that?

10 PROSPECTIVE JUROR: No.

11 THE COURT: On prior jury service, you indicated
12 that you were frustrated because during deliberations some
13 jurors in your mind didn't follow the instructions of the
14 Court and no verdict was reached as a result.

15 PROSPECTIVE JUROR: That's correct.

16 THE COURT: That can be frustrating. That can be
17 frustrating. My question for you is this: Because you had a
18 frustrating experience in another case and because that jury
19 was not able to reach a verdict in that case, would you rush
20 to judgment in this case just to reach a verdict --

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: -- and to avoid the jury not being able
23 to reach a decision?

24 PROSPECTIVE JUROR: No.

25 THE COURT: You'd take as much time as it

1 reasonably took to reach a verdict if you're a member of this
2 jury.

3 PROSPECTIVE JUROR: Yes, I would.

4 THE COURT: All right. Thank you, Mr. Wease.
5 Ms. Lee?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Good morning.

8 PROSPECTIVE JUROR: Good morning.

9 THE COURT: Ms. Lee, I don't think I have any
10 questions for you. Are you terribly disappointed?

11 PROSPECTIVE JUROR: I had one addition.

12 THE COURT: Please.

13 PROSPECTIVE JUROR: I was resting last night --

14 THE COURT: Could you speak up a little? Why don't
15 we get the microphone over to you.

16 PROSPECTIVE JUROR: One addition. We're talking
17 about organizations in the questionnaire. Can I address
18 that?

19 THE COURT: Yes. You've got California Teachers
20 Association.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: California Teachers?

23 PROSPECTIVE JUROR: Yes. Within my job as a
24 teacher we do fundraising, and we were doing a coin drive and
25 a gala fundraising, and it was for a country in Africa,

1 Growing Liberia's Children.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: That's the only thing that I
4 had thought of as an organization that I had --

5 THE COURT: Do you recall what country?

6 PROSPECTIVE JUROR: Liberia.

7 THE COURT: I'm sorry.

8 PROSPECTIVE JUROR: Liberia, Africa.

9 THE COURT: Okay. When's the last time you did
10 teach, Ms. Lee?

11 PROSPECTIVE JUROR: Six months ago.

12 THE COURT: And what courses, what level and
13 courses?

14 PROSPECTIVE JUROR: I taught kindergarten for ten
15 years.

16 THE COURT: And are you between jobs right now?

17 PROSPECTIVE JUROR: I am between jobs.

18 THE COURT: Okay. Thank you, Ms. Lee.

19 PROSPECTIVE JUROR: Thank you.

20 THE COURT: And Ms. Young, good morning.

21 PROSPECTIVE JUROR: Good morning, sir.

22 THE COURT: What did you do for Sav-On Drugs before
23 you retired?

24 PROSPECTIVE JUROR: I was a district cosmetic
25 coordinator. I oversaw 25 stores, the cosmetic departments.

1 THE COURT: Okay. Did you have people assisting
2 you or did you supervise others in that regard?

3 PROSPECTIVE JUROR: Yes, I did.

4 THE COURT: How many did you supervise?

5 PROSPECTIVE JUROR: Well, 25.

6 THE COURT: Twenty-five people? Okay. And for how
7 long did you work in that capacity?

8 PROSPECTIVE JUROR: About ten years --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: -- maybe that.

11 THE COURT: All right. Your spouse is a field
12 mechanic, and he's still working?

13 PROSPECTIVE JUROR: No, he's retired also.

14 THE COURT: Retired as well? And what kind of work
15 did he do? I mean working for what kind of a --

16 PROSPECTIVE JUROR: SDG&E.

17 THE COURT: SDG&E. Okay.

18 PROSPECTIVE JUROR: All the trucks and --

19 THE COURT: All right. Very good. Thank you,
20 Ms. Young. Mr. Channell?

21 PROSPECTIVE JUROR: Good morning, sir.

22 THE COURT: Good morning. You're currently DOD; is
23 that correct?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Okay. And where are you working

1 specifically?

2 PROSPECTIVE JUROR: NLF, Imperial Beach.

3 THE COURT: How long have you been with the
4 Department of Defense?

5 PROSPECTIVE JUROR: Twelve years.

6 THE COURT: And so the question that I asked
7 previously about identifying with the government would
8 certainly pertain to you. Do you feel as a result of being
9 employed by the government, working generally in the area of
10 defense that you would be inclined to favor the government in
11 this case?

12 PROSPECTIVE JUROR: No. I also spent ten years in
13 the military too, so I've seen a lot of stuff, and there's
14 extremists on both ends. So I'm pretty fair as it is. I've
15 seen a lot, so --

16 THE COURT: Okay. Setting aside what you've seen,
17 would your employment with the government in and of itself or
18 your past military experience just incline you to favor the
19 government? Do you feel some kind of an affinity for the
20 government because you work for the government at this time
21 and you have this military background?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Okay. When you say you've seen a lot,
24 what are you referring to?

25 PROSPECTIVE JUROR: Well, I've had a couple of

1 deployments; I've been to the Persian Gulf a couple of times,
2 I was actually deployed to Jordan, actually been to Somalia.
3 There's a lot of good people out there, and sometimes they
4 just kind of get overtaken by bad people.

5 THE COURT: Okay. Any of those experiences, any of
6 that exposure in any area that could influence you in this
7 case?

8 PROSPECTIVE JUROR: No, your Honor.

9 THE COURT: If you're on this jury, could you
10 resist the temptation of talking about that experience if
11 you're deliberating with the jury and all of a sudden
12 somebody asks you well --

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: -- I remember you were in Somalia, you
15 were in Jordan, you've had contact with Muslims; what
16 happened there? Would you be able to say wait a minute, you
17 know, the Court told us we can't --

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: -- that's extraneous information, I
20 can't bring that into deliberations?

21 PROSPECTIVE JUROR: Yes, sir, I could.

22 THE COURT: All right. And you feel you can be
23 completely fair in this case?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: All right.

1 PROSPECTIVE JUROR: That's one thing I've always
2 believed in is being fair.

3 THE COURT: All right, Mr. Channell. Thank you,
4 sir. If you'd pass the microphone down to Ms. Faith, we'll
5 hear from her. Could you give us a little bit more
6 information, Ms. Faith -- good morning to you.

7 PROSPECTIVE JUROR: Good morning.

8 THE COURT: -- what you did as a resource developer
9 for Urban Corps of San Diego.

10 PROSPECTIVE JUROR: Well, Urban Corps works with
11 underprivileged and at-risk students between 18 and 25 who've
12 dropped out of high school, and a number of our students were
13 either from Iraq, we had a few from Somalia, and my job there
14 was to help them find employment primarily.

15 THE COURT: These are young people for the most
16 part?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: You indicated in your questionnaire
19 that some of the people that you had worked with or had
20 contact with were Somalis.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: And these were Somali youth?

23 PROSPECTIVE JUROR: Yes, under 25.

24 THE COURT: Approximately how many?

25 PROSPECTIVE JUROR: Not that many, maybe a handful,

1 five or six.

2 THE COURT: Did you personally interact?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: And was that experience a positive
5 experience for you?

6 PROSPECTIVE JUROR: Yes, it was.

7 THE COURT: Anything about that particular
8 experience that could in any way incline you to favor one
9 side or the other in this case?

10 PROSPECTIVE JUROR: I don't think so, no.

11 THE COURT: Okay. Are you clear about that?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. You know, as I was going through
14 your questionnaire last night, I came upon your response to
15 question 19, and if you don't mind, I'm going to read it
16 because I think this was a -- I think this was a wonderful
17 response.

18 The question was do you have an opinion whether
19 Muslims are more violent than non-Muslims, and your answer
20 was "Tough question." That's how you started out. "The
21 press has certainly covered recent violence in Muslim
22 countries, but on an individual basis, I don't think they are
23 more violent."

24 So basically what you're saying is forget the
25 labels, forget the groups, people are people, yes, there's

1 coverage of what's happening with perhaps certain extremists
2 or radical groups or organizations, but people need to be
3 judged for who they are. Is that essentially what you --

4 PROSPECTIVE JUROR: Absolutely.

5 THE COURT: -- as a subtext of your answer. Well,
6 I certainly appreciate that answer, and I think -- I think
7 that will be it, Ms. Faith. I don't have any further
8 questions of you at this time. Thank you.

9 Ms. Flores, I really don't have any questions of
10 you at this time. Anything you'd like to add?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: Anything that you've heard us discuss
13 this morning that causes you any concern or poses any
14 questions for you in any way?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Okay. Thank you, Ms. Flores. Mr.
17 Sciacqua?

18 PROSPECTIVE JUROR: Good morning, your Honor.

19 THE COURT: Good morning, sir. I know you're
20 retired, and after your military career you indicated you
21 were an educator in the San Diego community. Can you tell us
22 what you did in that regard.

23 PROSPECTIVE JUROR: For the city college I was
24 helping foreigners, immigrants, learn math and teaching them
25 English terms about math because it's very -- the English

1 language is a very confusing. And many of my students were
2 from Somalia, which was good in the sense that I could
3 practice, keep up my Italian with them because they,
4 unfortunately, were under Mussolini for a few years or their
5 grandparents or parents were, and we also had a lot of
6 Vietnamese students and some --

7 THE COURT: So you were working with Somalis who
8 spoke Italian?

9 PROSPECTIVE JUROR: Yes. And also some of the
10 Vietnamese spoke French --

11 THE COURT: I see.

12 PROSPECTIVE JUROR: -- the older, because it was
13 French Indochina.

14 THE COURT: Right. I would assume they were older.
15 But how many Somali individuals did you have this kind of
16 contact with?

17 PROSPECTIVE JUROR: Oh, I really -- it's just a
18 guess. We had a class about 30 students all together, and
19 maybe -- sometimes there would be four or five individuals
20 from Somalia in that class, and then the next year there may
21 be none, so -- because it varied.

22 THE COURT: Okay. And the contacts were
23 instructive, were positive I'm assuming?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Any problems associated with any of

1 your relationships with anyone of Somali descent that could
2 in any way be problematic for you?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Okay. Do you have legal training,
5 training in the law?

6 PROSPECTIVE JUROR: I took legal courses -- I was a
7 line officer, and in the early -- in the '50s, I took classes
8 because the JAG for the Navy had not been expanded, so as a
9 line officer I was required to do court work, and I was
10 defense counsel on a special courts marshal.

11 THE COURT: I saw that, yes, you were -- on how
12 many cases were you defense counsel?

13 PROSPECTIVE JUROR: Well, I was actually -- let's
14 see. I was defense three or four times, and I was trial
15 counsel, which is the prosecutor's side, once and on the
16 board once, on the --

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: -- all for special courts.

19 THE COURT: Okay. All right. Very good, sir. And
20 you feel you could set aside whatever past legal experience
21 you've had in the Uniform Code of Military Justice and --

22 PROSPECTIVE JUROR: Well, it's different because
23 I've also worked at the superior court as a juror.

24 THE COURT: As a what now?

25 PROSPECTIVE JUROR: In the jury across the street

1 at the superior courts.

2 THE COURT: You worked at --

3 PROSPECTIVE JUROR: I was selected.

4 THE COURT: Oh, you've had prior jury experience,
5 yeah. All right, sir. Thank you.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: Mr. Johnson?

8 PROSPECTIVE JUROR: Yes. Good morning, your Honor.

9 THE COURT: Good morning. I assume that you are
10 a -- you hold a supervisor position with --

11 PROSPECTIVE JUROR: The Sharpell (phonetic) plant,
12 sir.

13 THE COURT: Yes.

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Okay. How many people are you
16 supervising at the present time, sir?

17 PROSPECTIVE JUROR: There's 18 people, sir.

18 THE COURT: How long have you been working in that
19 capacity?

20 PROSPECTIVE JUROR: Three years, sir.

21 THE COURT: All right. And you're also a licensed
22 minister at your church?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Okay. Do you believe that any of the
25 teachings of the church or any of your religious studies or

1 philosophy could in any way influence you in this case, sir?

2 PROSPECTIVE JUROR: Could you repeat that again,
3 sir.

4 THE COURT: Yes. I'm basically asking you do you
5 feel that any of the teachings of the church or any of the
6 religious principles to which you adhere could in any way
7 impose a burden on you in being fair and impartial in this
8 case?

9 PROSPECTIVE JUROR: No, sir. No, sir. No, your
10 Honor.

11 THE COURT: Okay. I realize you're not of the
12 Muslim faith obviously; that is apparent here from your
13 questionnaire. You're indicating that you believe the Muslim
14 or Islamic faiths are free choice for anyone to practice,
15 everyone has a right to practice the faith they want.

16 PROSPECTIVE JUROR: Yes, your Honor.

17 THE COURT: Would you hold it against anyone, any
18 of these defendants, for not embracing the religious
19 principles and teachings that you embrace as a minister?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Okay. I was interested with the law
22 enforcement contacts that you've had in the past,
23 particularly -- well, it started pretty early, and I think
24 most of us, many of us can relate to that kind of an early
25 contact with law enforcement. And there was another

1 circumstance, not perhaps law-enforcement centered, but was
2 pretty difficult for you as you relate that. Your younger
3 brother has -- that was in a spot of trouble; that's
4 reflected here. Any of your contact with law enforcement in
5 the past that could in any way influence your thinking, your
6 attitude in this case?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: Do you think your brother-in-law was
9 fairly treated by the criminal justice system?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: All right. The family seemed to accept
12 what occurred and --

13 PROSPECTIVE JUROR: Absolutely, yes, sir.

14 THE COURT: -- felt? Okay. All right. Thank you,
15 Mr. Johnson. Ms. Meza?

16 PROSPECTIVE JUROR: Good morning, your Honor.

17 THE COURT: Good morning. Ms. Meza, I don't think
18 I need to follow up with you at this particular point in
19 time; I don't have any questions for you. Anything that
20 you've heard so far this morning that raises any concern for
21 you? Anything that you'd like to volunteer that would be
22 responsive to the areas of questioning thus far?

23 PROSPECTIVE JUROR: Not so far.

24 THE COURT: Okay, Ms. Meza. Thank you. Ms. Lopez,
25 good morning.

1 PROSPECTIVE JUROR: Good morning.

2 THE COURT: How was your -- how was your husband
3 employed. I'm sorry for your loss. How he was employed?

4 PROSPECTIVE JUROR: He was -- when I met him, he
5 was in sales.

6 THE COURT: And --

7 PROSPECTIVE JUROR: He was -- served in the DEA
8 when he was in his 20s. I met him when he was 44.

9 THE COURT: Okay. Did he ever talk to you about
10 his earlier employment in the DEA?

11 PROSPECTIVE JUROR: Not really.

12 THE COURT: Do you know how long he had been in the
13 DEA?

14 PROSPECTIVE JUROR: I think it was just about two
15 or three years after -- he'd come out of the Vietnam War and
16 then went into the DEA.

17 THE COURT: Okay. I want to compliment you. You
18 were the one that had responded to that question on
19 credibility of law enforcement officers. The question was
20 "Would you always believe a law enforcement officer over
21 other witnesses?" Your answer was, "If I did, jurors would
22 not be needed," one of the more novel responses I've seen to
23 that question over many years. Okay, Ms. Lopez. Thank you.

24 Ms. Smith is next, right behind you there. Thanks.
25 Ms. Smith, can I get a little bit more information from you

1 about your current occupation.

2 PROSPECTIVE JUROR: I work for an international
3 society for computational --

4 THE COURT: Is that microphone working? Why don't
5 you bump it a little bit and see --

6 PROSPECTIVE JUROR: I can talk loud.

7 THE COURT: That's kind of par for the course for
8 this microphone. You going to switch batteries, Gaby? You
9 should keep a couple in your pocket.

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: Okay. So ISCB.

12 PROSPECTIVE JUROR: International Society for
13 Computational Biology, but all do I is the admin support for
14 it.

15 THE COURT: What kind of a group is it?

16 PROSPECTIVE JUROR: It's a scientific group that
17 deals with computational biology. We're based out of UCSD is
18 where our home office is. We've got 3,000 members around the
19 world, and I just do admin support for it and run reports and
20 that for my supervisor.

21 THE COURT: Okay. And your husband is a project
22 manager?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: And could you tell us a little more
25 about that, please.

1 PROSPECTIVE JUROR: He works for SAIC, and the
2 project he works on is a security program for the government.
3 I don't know exactly what it is, but it's some type of
4 security. And he was in the Navy for over 22 years.

5 THE COURT: Okay. So you got the prior military in
6 the family, got SAIC, government contractor work, you've got
7 your husband working on a project related to that type of
8 work. Anything about all of that inclines you to favor one
9 side or the other in this case?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Do you feel you have an affinity for
12 the government because it's played a prominent part of your
13 husband's life and --

14 PROSPECTIVE JUROR: And my life.

15 THE COURT: -- and your life as well by proxy, yes.

16 PROSPECTIVE JUROR: No. I feel that -- I know I
17 can be fair and that the government has helped us in our
18 career while he was in the military, but it's not -- I don't
19 think it would be something that would influence my opinion
20 at all.

21 THE COURT: Okay. In your -- in your response to
22 the area entitled "Personal beliefs," you indicate some
23 concern about certain acts taken in the name of God. Is it
24 your view that the entire Muslim faith itself stands for
25 killing in the name of God?

1 PROSPECTIVE JUROR: Absolutely not. I mean I don't
2 know any Muslims personally, but I know that there are good
3 people out there, but they're -- you just hear a lot.

4 THE COURT: Right.

5 PROSPECTIVE JUROR: -- in the news regarding, you
6 know, killing in the name of God and --

7 THE COURT: Yes.

8 PROSPECTIVE JUROR: And I'm not a religious person,
9 but I can't imagine killing someone in the name of your God;
10 that doesn't make sense to me.

11 THE COURT: Or otherwise.

12 PROSPECTIVE JUROR: Well, or otherwise, sure.
13 You're right. You're right. Absolutely. I didn't mean to
14 infer that.

15 THE COURT: I know that you're weren't suggesting
16 that. But, you know, many people will say well, you know,
17 there are good people out there, but I think that there needs
18 to be an acceptance of the proposition that a vast, vast,
19 vast majority of people who embrace the Muslim faith are
20 people of peace and that if you can't embrace that, if you
21 have a view that the faith is predicated upon violence or
22 other problematic principles, then that needs to be discussed
23 obviously. So is it your view that there are just a few
24 people out there, a few good people that --

25 PROSPECTIVE JUROR: Oh, no, no, no.

1 THE COURT: -- or do you have concerns about the
2 faith generally?

3 PROSPECTIVE JUROR: No. I think that the news
4 brings out those -- the bad ones, that the -- we only hear
5 about those incidents that are bad and just in general the
6 news is bad about everything, you know, I mean you don't hear
7 about those good people. It's very seldom. You know,
8 sometimes on the news you'll see something about -- they'll
9 do a -- this is our good report for the day, and you hear one
10 little --

11 THE COURT: Right.

12 PROSPECTIVE JUROR: -- you know, bit of news. But
13 no, I'm a believer that the majority of people in this world
14 are good, and there's -- it's just the few that make it bad
15 for everyone.

16 THE COURT: Thank you, Ms. Smith. Ms. Salinas,
17 good morning.

18 PROSPECTIVE JUROR: Good morning.

19 THE COURT: You're a high school teacher. I'd be
20 interested in knowing what courses you teach.

21 PROSPECTIVE JUROR: I teach English 12 for seniors,
22 AP literature for seniors, and also yearbook.

23 THE COURT: AP literature.

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: That's pretty impressive. And how long

1 have you been teaching at that level?

2 PROSPECTIVE JUROR: This is my seventh year.

3 THE COURT: Okay. And where are you teaching,
4 Sweetwater Union; is that --

5 PROSPECTIVE JUROR: The school I teach is Olympian
6 High School; it's part of the Sweetwater Union School
7 District.

8 THE COURT: Very good. And your significant other
9 is in sales involving what types of products or services?

10 PROSPECTIVE JUROR: He's my boyfriend, and he works
11 at a retail store where they buy and sell used music and
12 videos.

13 THE COURT: Okay. Very good. Thank you, Ms.
14 Salinas. Okay. Why don't we do this. Let's take our
15 midmorning recess at this point, and before you leave, ladies
16 and gentlemen, just let me say this. First of all, for those
17 of you in assigned seats, please know where you're seated
18 because when you come back, you'll be taking those same
19 seats.

20 Couple of other things I'd like to mention for the
21 first time around here. I mentioned the admonition to you,
22 but I'm going to give you the admonition at this point; of
23 course it applies at all times. Please do not discuss this
24 case amongst yourselves or with anyone else or allow
25 yourselves to form or express any opinions on the case until

1 you are a juror and the jury has retired to deliberate, then
2 and only then.

3 And then finally, we always appreciate you promptly
4 returning following a recess. When we take a 15-minute
5 recess, please be outside waiting for us. We will call you
6 in for each new session of court. And I think that's it.
7 We'll see you in 15 minutes.

8 (The jury left the courtroom.)

9 THE COURT: Okay. Feel free to -- we'll give these
10 gentlemen a break. And if you want to use the facilities,
11 you certainly may.

12 (There was a break in the proceedings.)

13 THE COURT: Okay. Thank you, ladies and gentlemen.
14 And, Ms. Boggess, we're going to resume with you, so we'll
15 get that microphone over to you. Good morning --

16 PROSPECTIVE JUROR: Good morning.

17 THE COURT: -- Ms. Boggess. Well, as I went
18 through your questionnaire, my leading impression was you
19 must have one of the most coveted jobs in the entire country
20 as being a supervisor at Costco.

21 PROSPECTIVE JUROR: I don't know if you'd go that
22 far.

23 THE COURT: You get that a lot, do you?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Twenty years. That's wonderful. I

1 don't have any other -- I imagine you're supervising people
2 there.

3 PROSPECTIVE JUROR: Yeah, a lot of different kinds
4 of people, and I have an open mind of things. I supervise a
5 hundred different people at any given time, I work with a lot
6 of different kinds of people, and that's given me an open
7 mind too.

8 THE COURT: How many people do you supervise at any
9 given point in time?

10 PROSPECTIVE JUROR: Probably 50 in a day; that's on
11 the front end, so probably about 50 employees there a day.

12 THE COURT: Okay. Well, thank you --

13 PROSPECTIVE JUROR: Thank you.

14 THE COURT: -- Ms. Boggess. Okay. Mr. Breier?

15 PROSPECTIVE JUROR: Yes, your Honor.

16 THE COURT: Yes. Good morning. You've got a
17 number of relatives employed -- or some relatives employed by
18 government. Anything about -- anything about family
19 connection to government employment that could in any way
20 influence you in this case?

21 PROSPECTIVE JUROR: No, your Honor.

22 THE COURT: Okay. Don't feel any connection with
23 the government in this case?

24 PROSPECTIVE JUROR: No, not at all.

25 THE COURT: Okay. All right. I didn't have any

1 other questions of you, Mr. Breier. Thank you, sir. Okay.
2 Mr. Buckner, good morning.

3 PROSPECTIVE JUROR: Good morning.

4 THE COURT: In connection with your employment at
5 Solar Turbines, are you in a supervisory capacity as well,
6 sir?

7 PROSPECTIVE JUROR: In human resources I support
8 the managers and vice-presidents at our location.

9 THE COURT: Okay. As a senior principal are you
10 overseeing other people at the company?

11 PROSPECTIVE JUROR: Yes, I guess you could say
12 that, yes.

13 THE COURT: Approximately --

14 PROSPECTIVE JUROR: I have no direct reports. I'm
15 more of an individual contributor.

16 THE COURT: How long have you been with Solar
17 Turbines?

18 PROSPECTIVE JUROR: Forty-three years.

19 THE COURT: And going over some of the jury
20 experience you've had, you've had the -- you sat on a civil
21 case basically back in '96, and this would probably be the
22 appropriate time to talk about the differences in burdens of
23 proof in civil cases as opposed to criminal cases.

24 Now, that was a while back. You may not recall
25 that the burden of proof in that case was a preponderance of

1 the evidence. Does that phrase ring familiar to you?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay. And for those of you, just to
4 remind you, in civil cases the burden of proof, that is, the
5 standard of persuasion which must be carried by the party
6 with that burden is a preponderance of the evidence. So if
7 this were a civil case, a traffic accident or a contract
8 dispute, the plaintiff would have the obligation to establish
9 by a preponderance of the evidence or that evidence that
10 merely outweighs opposing evidence and thus has a greater
11 probability of truth; that's the standard we see in civil
12 cases.

13 In criminal cases of course the burden of proof is
14 a much higher burden; it's on the government, as has already
15 been explained to you, it's proof beyond a reasonable doubt,
16 proof that leaves the jury firmly convinced that a defendant
17 is guilty of a charge. You do understand the difference in
18 that I'm sure, Mr. Buckner.

19 PROSPECTIVE JUROR: Yes, I do.

20 THE COURT: Okay, sir. And was that in superior
21 court here in San Diego?

22 PROSPECTIVE JUROR: Yes, it was.

23 THE COURT: All right. Across the street?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Okay. Okay. Thank you, Mr. Buckner.

1 Mr. Murguia?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Good morning, sir, again.

4 PROSPECTIVE JUROR: Good morning.

5 THE COURT: How long have you been a facility
6 engineer at the hotel?

7 PROSPECTIVE JUROR: A little less than a year.

8 THE COURT: And before that you had all these other
9 positions, as a fabricator, a plumber, working shipyards,
10 sales, and as a merchandiser; is that correct, sir?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: I believe that's the only question I
13 had for you, Mr. Murguia. Thank you, sir. Ms. Free, good
14 morning.

15 PROSPECTIVE JUROR: Good morning, your Honor.

16 THE COURT: Would you be a little more specific
17 about your son's experiences in Africa, specifically in
18 Uganda, where he was for five months. You indicated that he
19 was there working with children, he was with an NGO, a
20 nongovernmental organization. Could you be -- give us a
21 little bit more information on that.

22 PROSPECTIVE JUROR: Sure. He is a videographer,
23 and he went to film the children and adults who are involved
24 in the Invisible Children NGO in their daily lives and their
25 cottage industries that are set up to support themselves and

1 further education, of rebuilding of schools that have been --
2 and homes where children have been displaced.

3 THE COURT: Was that the name of -- is that the
4 name of the NGO, Invisible Children?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: And how would the -- the product of
7 your son's efforts, any film, be utilized? I assume he was
8 filming for a purpose.

9 PROSPECTIVE JUROR: They're hoping to release a
10 documentary. They've already been working on it ten years,
11 and they're just enhancing the original footage. They just
12 keep adding to it. They're trying to keep the film to an
13 hour. I have no idea. It's already been ten years. I don't
14 know how much longer it's going to be. He is no longer, as
15 of November, working for them.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: He has a different job now.

18 THE COURT: Okay. The NGO, was it sponsored by a
19 particular group or organization; do you know?

20 PROSPECTIVE JUROR: It is its own -- it's a -- it's
21 its own nonprofit.

22 THE COURT: Okay. Does it --

23 PROSPECTIVE JUROR: I don't know how to explain it.

24 THE COURT: Does it work with governmental
25 agencies, U.S. governmental agencies?

1 PROSPECTIVE JUROR: No, not that I know of. I mean
2 just these three young men went to Africa and didn't like
3 what they saw and decided to make a documentary ten years
4 ago, and they're still adding footage.

5 THE COURT: Okay. And it was all in Uganda?

6 PROSPECTIVE JUROR: Correct.

7 THE COURT: He would explain to you what the
8 experience was like, I assume, from time to time?

9 PROSPECTIVE JUROR: Well, he -- they released
10 little bits of their film kind of like teasers, so we would
11 see that along with anybody else who is familiar with the
12 organization.

13 THE COURT: Okay. Anything about what your son did
14 in connection with those efforts -- and they seem to be very
15 laudatory efforts -- or any information he gave you about
16 that experience or his observations of Ugandan society or
17 children in need that could in any way influence you in this
18 case?

19 PROSPECTIVE JUROR: I don't believe so. It's very
20 insulated to this one group of, you know, people that live
21 there and, you know, what their daily lives, what they're
22 experiencing. It's pretty -- it's a pretty tight-knit group
23 actually, you know.

24 THE COURT: Okay. With respect to credibility or
25 believability of law enforcement officers who may testify, I

1 took it from your response that you could judge law
2 enforcement officers and their credibility as you would any
3 other witness who was not involved in law enforcement. Is
4 that what your intention was when you indicated "always" with
5 a question mark and then "probably but would take all
6 evidence into consideration"?

7 PROSPECTIVE JUROR: Yes, your Honor.

8 THE COURT: Okay. You spent quite a bit of time on
9 that this morning I know; I just wanted to be sure you didn't
10 have any concerns along those lines. Thank you --

11 PROSPECTIVE JUROR: Thank you, your Honor.

12 THE COURT: -- Ms. Free. Okay. Mr. Bristow, we
13 have you next.

14 PROSPECTIVE JUROR: Good morning, your Honor.

15 THE COURT: Good morning, sir. And you've been
16 with Qualcomm for how long, sir?

17 PROSPECTIVE JUROR: Twelve years.

18 THE COURT: And before that, any other employment
19 that we should be aware of? That would have been you right
20 out of high school if you --

21 PROSPECTIVE JUROR: Yeah. I had a couple jobs in
22 high or actually one job after high school.

23 THE COURT: Yeah, yeah. You and Ms. Boggess are --

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: -- pretty nice.

1 PROSPECTIVE JUROR: We do well.

2 THE COURT: Anything about that contact with law
3 enforcement in 2010 that could in any way influence you in
4 this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: As far as you were concerned, was there
7 fair treatment --

8 PROSPECTIVE JUROR: They treated me fairly.

9 THE COURT: Okay. All right, sir. Thank you,
10 Mr. Bristow.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: And Ms. Cleavenger.

13 PROSPECTIVE JUROR: Good morning.

14 THE COURT: Good morning. You're -- you're living
15 with another individual at this point. I was just curious as
16 to what that individual does for an occupation, if anything.

17 PROSPECTIVE JUROR: He is a busboy at his family
18 restaurant.

19 THE COURT: Okay. Thank you. And, Ms. Cleavenger,
20 I don't have any other questions for you. Thank you. Ms.
21 Freni, good morning.

22 PROSPECTIVE JUROR: Good morning, your Honor.

23 THE COURT: First of all, in response to the
24 question concerning political identification, you didn't mark
25 anything, not even "none of the above." I just want to make

1 sure that question wasn't missed by you, the question that
2 asks people whether they identify with Christian
3 conservatives, traditional conservatives, libertarians,
4 moderates, liberal/progressives, or independents.

5 PROSPECTIVE JUROR: I must have missed the
6 question.

7 THE COURT: I'm sorry?

8 PROSPECTIVE JUROR: And I didn't mark anything?

9 THE COURT: And you didn't mark "none of the
10 above," no.

11 PROSPECTIVE JUROR: Then I just skipped it by
12 accident.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: Can you give me the choices
15 again? Sorry.

16 THE COURT: Sure. We have Christian conservatives
17 traditional conservatives, Libertarians, moderates,
18 liberals/progressives -- stop me when I get to --

19 PROSPECTIVE JUROR: I would say a little bit of all
20 of them.

21 THE COURT: Well, we don't have all of the above.
22 That's what you were looking for. And independents.

23 PROSPECTIVE JUROR: I'm sorry.

24 THE COURT: Okay. That's fine. We'll go on to
25 something else if you don't have any strong identification

1 with any of those.

2 PROSPECTIVE JUROR: No, neither way.

3 THE COURT: Sure, sure. Okay. So you're keeping
4 the books for your father --

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: -- who had a very interesting job.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: And he was working in that service,
9 with the U.S. Secret Service, for how long?

10 PROSPECTIVE JUROR: Oh, gosh. Probably 1960 to
11 about 1972.

12 THE COURT: Okay. Always in the presidential
13 guard?

14 PROSPECTIVE JUROR: When we moved to San Diego, he
15 worked with the Treasury here, and also when Nixon would come
16 to San Clemente he would --

17 THE COURT: Spring into action?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: And your husband is an attorney?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And tell us a little bit about what his
22 practice has been and what it is now at the present time.

23 PROSPECTIVE JUROR: He's a civil trial attorney.
24 He does business, real estate, some elder abuse cases.

25 THE COURT: That's here in the San Diego area?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Is he with a firm or by himself?

3 PROSPECTIVE JUROR: He has his own firm.

4 THE COURT: Okay. And has he ever practiced
5 criminal law in the past? Was he affiliated with a
6 prosecutorial office or a defense attorney?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Okay. It's always been in the civil
9 arena; is that correct?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Is he a trial lawyer?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Your father's business now is
14 consisting of what so that you're helping him?

15 PROSPECTIVE JUROR: He's a private lender, real
16 estate lender. He lives in Florida now, but he has some
17 loans here in California as well as Indiana and Florida; so I
18 keep all of the loan ledgers and basically all of his books
19 from his purchases and get his books ready for taxes each
20 year.

21 THE COURT: Okay. Do you work with your husband at
22 all? Even though he's got a firm, his own firm, you
23 indicated, do you assist him as well?

24 PROSPECTIVE JUROR: I do some of the accounting,
25 yes, on just online. I don't go to the office; I'm able to

1 just sign onto his server, so I do the payroll and reconcile
2 the accounts.

3 THE COURT: Okay. He doesn't have you appear for
4 him in depositions and -- no?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Very good.

7 PROSPECTIVE JUROR: He has an assistant.

8 THE COURT: This would be John Freni, would it not?

9 PROSPECTIVE JUROR: Yes, your Honor.

10 THE COURT: Okay. He's known to many of us. Thank
11 you, Ms. Freni.

12 PROSPECTIVE JUROR: Thank you.

13 THE COURT: All right. Let's see. Mr. Todd, you
14 are next up. Mr. Todd, good morning.

15 PROSPECTIVE JUROR: Good morning.

16 THE COURT: I know you recently substituted in, and
17 I did have an opportunity to go over your questionnaire, I
18 want you to know that, but I really don't have any questions
19 for you, sir. Just checking one more time. No. Mr. Todd,
20 anything you'd like to -- any thoughts you may have or
21 questions or concerns relative to what we're doing here,
22 nature of the case, following any of the instructions?

23 PROSPECTIVE JUROR: Not really. Not really.

24 THE COURT: Okay. All right. Very good. Thank
25 you. Ms. Delaney, good morning.

1 PROSPECTIVE JUROR: Good morning.

2 THE COURT: In terms of your prior jury service,
3 you did have -- you did sit on a case which in all
4 probability took place in this courthouse.

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: And that was back in the what, 2001
7 or --

8 PROSPECTIVE JUROR: 2009.

9 THE COURT: 2009?

10 PROSPECTIVE JUROR: Yeah, in that ballpark. I
11 don't know the exact year.

12 THE COURT: Okay. And was that particular
13 experience acceptable for you?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Do you see anyone here in the
16 courtroom who was associated with that earlier case? And by
17 here I'm referring basically to --

18 PROSPECTIVE JUROR: The attorneys.

19 THE COURT: -- the government's counsel table.

20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. Very good. All right. Thank
22 you, Ms. Delaney. And then we go to Ms. Hernandez. Good
23 morning.

24 PROSPECTIVE JUROR: Good morning.

25 THE COURT: What types of cases do you work on as a

1 county case worker?

2 PROSPECTIVE JUROR: I work with public assistance,
3 providing public assistance.

4 THE COURT: I see you bobbing and weaving there,
5 yeah.

6 PROSPECTIVE JUROR: Medi-Cal, food stamps, cash
7 aid.

8 THE COURT: How many case files do you work on at
9 any given point in time?

10 PROSPECTIVE JUROR: In a week -- I mean it could be
11 25 cases in a week, sometimes more, sometimes less. Just
12 depends on the time of the month.

13 THE COURT: Are you out of the office a good deal
14 of the time?

15 PROSPECTIVE JUROR: No, we work in the office --

16 THE COURT: In the office and --

17 PROSPECTIVE JUROR: -- interviewing clients when
18 they come in to apply for assistance.

19 THE COURT: So you don't do home visits or that
20 kind of thing?

21 PROSPECTIVE JUROR: (Shakes head)

22 THE COURT: Okay. You probably see a pretty good
23 mix of people I would think.

24 PROSPECTIVE JUROR: Yes, I do.

25 THE COURT: Okay. Have you seen any members of the

1 Somali community that you can recall?

2 PROSPECTIVE JUROR: I don't believe so, no.

3 THE COURT: Okay. How long have you been doing
4 this now?

5 PROSPECTIVE JUROR: I have been doing this for a
6 year.

7 THE COURT: Okay. And before that you were a loan
8 underwriter and working in banking?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Very good. I did want to ask you about
11 that circumstance involving your brother where he was --
12 where he was a victim and your stepbrother, who was not the
13 victim --

14 PROSPECTIVE JUROR: Right.

15 THE COURT: -- in a separate matter. As far as you
16 were concerned, did the criminal justice system work in those
17 cases?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: But --

20 PROSPECTIVE JUROR: I mean I feel that -- yes. In
21 one there was really know way to find the people, so they --

22 THE COURT: This is your brother.

23 PROSPECTIVE JUROR: My brother. And my stepbrother
24 committed a crime and that's the punishment.

25 THE COURT: You think he was fairly treated?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Nothing about the family or within the
3 family that you're aware of that was critical about the
4 response or how your brother-in-law was treated?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. All right. Thank you,
7 Ms. Hernandez. Ms. Ramirez, good morning.

8 PROSPECTIVE JUROR: Good morning.

9 THE COURT: Is your position at your company as a
10 financial planner, an advisor, a broker; what do you do
11 there?

12 PROSPECTIVE JUROR: I work for the brokers.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: No, I'm more on the client
15 service side; I'm called a client associate.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: Client assistant.

18 THE COURT: What kinds of things do you do there?

19 PROSPECTIVE JUROR: I do things like update cost
20 basis for taxes, I prepare performance reports on portfolios,
21 I order replacement Visa cards, move funds between accounts.

22 THE COURT: Sounds like you do an awful lot.
23 Updating cost basis for tax purposes, is that oftentimes a
24 difficult and challenging task?

25 PROSPECTIVE JUROR: Very much so. With the law

1 changes, yes.

2 THE COURT: What you do if you just don't have
3 sufficient information?

4 PROSPECTIVE JUROR: We usually have the
5 information. It's the hoops you go through to make changes
6 because say someone received a stock as a gift or something
7 like that -- it's just the data entry of it is the cumbersome
8 part.

9 THE COURT: Thank you, Ms. Ramirez. Okay. Ms.
10 Fierro?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Good morning.

13 PROSPECTIVE JUROR: Good morning.

14 THE COURT: Could you tell me a little bit about
15 what your son does in New York in the profession.

16 PROSPECTIVE JUROR: Yes, he's a corporate lawyer.
17 He works for the Sidley Austin law firm, and he doesn't do
18 trials; he does a lot of contracts. I don't know. He says
19 he works with a lot of money. I don't really know too much
20 about it. I'm just amazed he's there.

21 THE COURT: He does transactional work at --

22 PROSPECTIVE JUROR: Yes, I guess.

23 THE COURT: -- I assume. Okay. And did he ever
24 practice criminal law; do you know?

25 PROSPECTIVE JUROR: No, he did not. He went to

1 Berkeley Law.

2 THE COURT: Okay. And are there any other
3 attorneys in the family?

4 PROSPECTIVE JUROR: No. He's the first one in our
5 family who got there. Very proud of him.

6 THE COURT: Very good. Okay. Thank you, Ms.
7 Fierro. Ms. Stahl?

8 PROSPECTIVE JUROR: Good morning.

9 THE COURT: Good morning. I went through your
10 questionnaire, and at this point I don't think I have any
11 questions of you. Anything -- anything that's been said this
12 morning in the courtroom or yesterday that causes you any
13 concern about your ability to be a fair and impartial juror
14 in this case?

15 PROSPECTIVE JUROR: No, your Honor.

16 THE COURT: Okay. All right, Ms. Stahl. Thank
17 you. Mr. Crowell, good morning.

18 PROSPECTIVE JUROR: Good morning.

19 THE COURT: When it came to the personal beliefs
20 section, I just wanted to explore with you a little bit of
21 that as I have with some of your fellow panel members. When
22 it came to the question about Islamic teachings or doctrine
23 that might be personally offensive to you, you indicated
24 "some doctrine is against my beliefs," and I just wanted to
25 give you a chance to talk about that a little bit, whether

1 that's a concern you have across the board about the entire
2 Islamic faith or whether it was of a more limited nature.

3 PROSPECTIVE JUROR: Probably more of a limited
4 nature. You know, there's just aspects, you know, between
5 who comes first -- country, family, religion all that. I
6 think it's a little different in this culture.

7 THE COURT: Anything about your understanding of
8 the Islamic faith or its teachings that would make it
9 difficult for you to sit as a fair and impartial juror in
10 this case?

11 PROSPECTIVE JUROR: No, it would not.

12 THE COURT: As I mentioned previously, the issues
13 in this case are going to be pretty discrete; they're pretty
14 well-defined. You know, the charges in the case are
15 providing material support or conspiring to provide material
16 support to terrorists or a terrorist organization, and
17 whether that was done or wasn't done, nobody -- nobody is
18 trying to portray al-Shabaab in a positive light; the
19 question is whether or not there was support, and that's, as
20 I say, a pretty discrete, you know, defined question
21 ultimately. So if there are -- if you have some general --
22 not some general but some specific concerns about Islamic
23 teaching, which I'm still not completely sure of, and would
24 any of those teachings color your thinking on the obligation
25 you have to judge the evidence fairly and to look at these

1 discrete, very discrete issues in this case?

2 PROSPECTIVE JUROR: No, I don't believe so.

3 THE COURT: Okay. All right, sir. Thank you, Mr.
4 Crowell. Okay. Mr. Brenzel?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Mr. Brenzel, I don't think I have any
7 questions of you either at this point, but I would ask you
8 whether there is anything you'd like to volunteer, any
9 concerns you may have, any doubts you may have about your
10 ability to be fair and impartial based upon what you've been
11 hearing the last few days.

12 PROSPECTIVE JUROR: No, nothing.

13 THE COURT: Okay. Thank you, sir. Mr. Dominguez?

14 PROSPECTIVE JUROR: Good morning.

15 THE COURT: Good morning. Were you -- you had your
16 own -- you're a contractor I assume.

17 PROSPECTIVE JUROR: General building contractor.

18 THE COURT: General contractor, licensed general
19 contractor.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And I assume that the company's still
22 active, that when you put down unemployed, that threw me a
23 little bit --

24 PROSPECTIVE JUROR: No.

25 THE COURT: -- because you're the company.

1 PROSPECTIVE JUROR: I'm no longer licensed. I let
2 it expire.

3 THE COURT: You let it expire.

4 PROSPECTIVE JUROR: I dissolved the corporation.

5 THE COURT: Got you. Okay. When did that happen,
6 sir?

7 PROSPECTIVE JUROR: It happened in 2010.

8 THE COURT: And pretty recently. What's been
9 happening since then?

10 PROSPECTIVE JUROR: Just been, you know, doing odd
11 jobs, taking it easy.

12 THE COURT: Okay. How long were you in building or
13 doing contracting work?

14 PROSPECTIVE JUROR: Officially since I was 18, but,
15 you know, before that with my dad.

16 THE COURT: When did you first get your license?

17 PROSPECTIVE JUROR: I became licensed in '97.

18 THE COURT: Were you working as an RMO or an RME on
19 his license and then took that over or --

20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. Got your own license then?

22 PROSPECTIVE JUROR: Correct.

23 THE COURT: Okay. All right. Thank you. Thank
24 you, Mr. Dominguez. Mr. Merkin?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Good morning, sir.

2 PROSPECTIVE JUROR: Good morning.

3 THE COURT: Can you tell me what your background
4 has been in legal practice.

5 PROSPECTIVE JUROR: Well, I'll try to make it
6 short, but I was --

7 THE COURT: Is that microphone out again?

8 PROSPECTIVE JUROR: No.

9 THE COURT: No? That's good.

10 PROSPECTIVE JUROR: I'll hold it closer. When I
11 got out of law school, I went into the Army, Judge Advocate
12 General Corps, and in that capacity they sent me to Germany,
13 and my job was trying or defending general courts martial; I
14 did that for almost three years. Then I came -- went back to
15 El Paso, Texas, where I spent most of my career, and I
16 practiced law there, general civil law, but it turned into a
17 trial practice, and I practiced there from 19 -- early 1957 I
18 guess it was until 1989, when I retired and came out here.
19 But I was involved in -- in civil litigation, primarily in
20 trial work.

21 THE COURT: Okay. Did you ever practice criminal
22 law?

23 PROSPECTIVE JUROR: Yes, I did, sir.

24 THE COURT: When was that?

25 PROSPECTIVE JUROR: Well, first of course in the

1 JAG Corps.

2 THE COURT: Yeah, sure. But aside from that.

3 PROSPECTIVE JUROR: And then early in my career, I
4 handled a number of criminal cases, but my practice veered
5 more and more towards civil practice. And I would say that
6 my criminal practice was not more than 5 percent of my work,
7 but occasionally I would do some criminal work for a client
8 that I had or a new one.

9 THE COURT: So it wasn't ever the pure practice of
10 law or a practice where you had a substantial percentage of
11 your practice devoted to criminal law except maybe in the
12 very beginning there.

13 PROSPECTIVE JUROR: That's correct, sir.

14 THE COURT: But after that, after that beginning,
15 then you'd handle criminal matters as they might pop up for
16 your civil clients and that was never any more than about
17 five --

18 PROSPECTIVE JUROR: Essentially few and far
19 between.

20 THE COURT: But for that period of time when you
21 were concentrating on criminal --

22 PROSPECTIVE JUROR: Yes --

23 THE COURT: -- first in --

24 PROSPECTIVE JUROR: -- somewhat.

25 THE COURT: -- civilian practice, how long was that

1 period?

2 PROSPECTIVE JUROR: Well, I would say that my
3 criminal work was probably essentially maybe 40 or 50 percent
4 in my earlier career, and that must have been over a period
5 of two or three years.

6 THE COURT: What kinds of matters did you handle,
7 everything or did you specialize?

8 PROSPECTIVE JUROR: I never handled a capital case,
9 but if you named anything else, there's a pretty fair chance
10 that I was involved in it.

11 THE COURT: And it would have been defense work.

12 PROSPECTIVE JUROR: That was defense work, sir,
13 yes.

14 THE COURT: Okay. And where -- that was in El
15 Paso?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: All right. Did you practice law in
18 California at any point?

19 PROSPECTIVE JUROR: No. I'm an arbitrator out here
20 with the American Arbitration Association and for the
21 Financial Industry Resources Authority, FINRA.

22 THE COURT: And how often are you in arbitration?
23 What percentage of your time right now is devoted to
24 arbitration?

25 PROSPECTIVE JUROR: Between 5 and 10 percent, sir.

1 THE COURT: Okay. If you're on the jury, could you
2 cast aside all of your legal education and experience and
3 just confine -- confine yourself to the evidence in this case
4 and the law ultimately that's provided?

5 PROSPECTIVE JUROR: I am who I am, but I really,
6 truly believe that I'm a disciplined person, and I can base
7 my judgment on what I hear and nothing more.

8 THE COURT: All right, sir. Thank you, Mr. Merkin.
9 Mr. Evans?

10 PROSPECTIVE JUROR: Good morning, sir.

11 THE COURT: Good morning. I needed to clarify a
12 couple of responses in the personal belief section of the --
13 of the questionnaire where you indicate your view of the
14 Muslim or Islamic faith as being a peaceful faith except for
15 extremists and followers. Then a little farther down,
16 indicating or including a reference to Muslim extremists.
17 The question I would have for you is the question I had for a
18 few of your fellow panel members. Are you -- in terms of the
19 references to extremists or violence, are you limiting that
20 to a -- to a specific and small group of individuals and/or
21 organizations or are you more or less applying that generally
22 to the Muslim or Islamic faith?

23 PROSPECTIVE JUROR: No, I meant a small number.
24 It's a very few. The -- no, religion -- no -- has that
25 extremist view in which it's -- how can I explain it? I

1 guess, it's from -- like the other person that said from the
2 news you get a small percentage of the bad news, and it's not
3 the whole faith, it's just a small percentage that has that
4 extremist view that, you know, we can't help but hear about,
5 so --

6 THE COURT: All right, sir. Thank you, Mr. Evans.
7 Ms. Alise?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: I am looking for your questionnaire
10 because I know you -- I know you came in a bit late.

11 PROSPECTIVE JUROR: I did?

12 THE COURT: No, no. I mean you were seated late,
13 were you not? You took over for Mr. Mapanao.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: So I am -- if you'd give me just a
16 moment --

17 PROSPECTIVE JUROR: Would you like me to sing?

18 THE COURT: We would appreciate it, and --

19 PROSPECTIVE JUROR: Yes, yes.

20 THE COURT: From the sound of it, I --

21 PROSPECTIVE JUROR: Zip-a-dee-doo-dah --

22 THE COURT: -- think you can entertain us as well.
23 I'll be with you very shortly, I promise.

24 PROSPECTIVE JUROR: -- zip-a-dee-ay.

25 THE COURT: I did have an opportunity to review

1 your questionnaire, and after all of that, I must say I
2 really don't have any questions.

3 PROSPECTIVE JUROR: Well, let me just thank you for
4 your sense of humor.

5 THE COURT: Okay. Thank you. Thank you, Ms.
6 Alise. Okay. Mr. Adams?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: And I don't have any follow-up
9 questions for you as well. You indicated that you knew
10 somebody in the horn -- well, in Kenya, which is -- which
11 neighbors -- I believe neighbors Somalia, and --

12 PROSPECTIVE JUROR: I believe so, yes.

13 THE COURT: -- anything about that particular
14 friendship or information that you might have gained from
15 that part of the world and knowing this gentleman most of
16 your life that could in any way influence you in this case?

17 PROSPECTIVE JUROR: Not really. He moved here when
18 he was about 20 I believe, and I believe he's 55 now, and
19 he's just tried to assimilate himself to the U.S. And he was
20 a citizen when I met him.

21 THE COURT: Okay. Very good. Thank you. Thank
22 you, Mr. Adams. Okay. Ms. Clark, you're the person
23 everybody's been waiting to hear from.

24 PROSPECTIVE JUROR: Good morning.

25 THE COURT: Good morning. And, you know, the

1 question I had for you relates to the question about law
2 enforcement, question number 50, would you always believe a
3 law enforcement officer over other witnesses. And you
4 indicated yes. And I wanted to explore that with you. I
5 didn't know whether you answered that in error, that you
6 meant no, but then I saw that your father-in-law is CHP, and
7 I thought maybe there was a family -- just a family
8 connection or influence there that would cause you to say
9 that. So would you just explain a little bit, please.

10 PROSPECTIVE JUROR: I don't -- didn't mean so much
11 greater, would give it greater importance or it would be more
12 truthful; but I thought that everybody that goes up there,
13 you know, says their oath too, saying the truth, and so I
14 think that, you know, they do tell the truth, I hope so, and
15 I feel that I believe that everybody up there will tell the
16 truth, their own truth, and it's up to us to decide whether
17 that truth --

18 THE COURT: Well, do you think law enforcement
19 officers are more truthful than people who are not in law
20 enforcement?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Okay. So I shouldn't be concerned at
23 all or counsel shouldn't be concerned at all that you checked
24 "yes" on your questionnaire?

25 PROSPECTIVE JUROR: No, not more truthful. I'm

1 assuming each person that takes the oath --

2 THE COURT: Oh, I see. By "yes" you meant --

3 PROSPECTIVE JUROR: -- is going to say --

4 THE COURT: Go ahead.

5 PROSPECTIVE JUROR: No. -- is going to say the
6 truth, and that's our duty to judge that.

7 THE COURT: It is your responsibility as judges of
8 the facts to determine the believability of witnesses. And
9 as I stated previously and more than once, you do that by,
10 you know, making observations, just relying on your common
11 sense, looking at the manner of the individual testifying,
12 the quality and character of testimony, and all the other
13 things. And nobody should start with an advantage over
14 anyone else by having a jury thinking that before they even
15 take the stand that they're more truthful than other
16 witnesses who testify. Do you agree with that?

17 PROSPECTIVE JUROR: Absolutely.

18 THE COURT: Okay. All right. Very good. Then
19 we'll retrieve that microphone from you. I'm just -- I'm
20 going to wrap things up for myself here in just a -- in just
21 a minute or two, and then you're going to hear from counsel.
22 Each side has a limited period of time, ladies and gentlemen,
23 within which to follow up and ask any questions they -- that
24 are appropriate and fair, and they'll begin that in just a
25 few minutes, but I wanted to end on this note.

1 Yesterday, once again, I spent quite a bit of time
2 talking about the presumption of innocence, a bedrock
3 constitutional principle, and I tried to explain to everyone,
4 I tried to convey the very, very important principle that
5 these constitutional principles matter, they have meaning,
6 they're not just sayings, they're not just words. And I
7 mentioned some of the consequences or applications of the
8 presumption of innocence, that is, that a defendant is
9 presumed innocent until and unless the contrary is proven,
10 until and unless the burden on the government is carried.
11 And I just want to emphasize a few of those things at this
12 point.

13 A defendant in a criminal case, in any criminal
14 case, never carries the burden of proving anything. A
15 defendant in a criminal case has no responsibility to put on
16 a case, to call witnesses, to introduce evidence, to
17 cross-examine witnesses called by the government, even to
18 make an opening statement or to make a closing argument at
19 the end of the case. None of this is imposed upon a
20 defendant because of these principles that I'm just
21 discussing.

22 And I spoke at some length about the constitutional
23 right for a defendant not to testify, to decide not to
24 testify. And I mentioned that you cannot hold that against
25 any defendant who might exercise that constitutional right.

1 You may not draw any negative inferences from a defendant
2 deciding not to testify. You may not discuss that in
3 deliberations. You may not consider that as a factor in your
4 deliberations.

5 If there is anyone here who has any difficulty
6 accepting any of these principles, would you please raise
7 your hand at the present time. I see no hands raised.

8 If there's anyone here who would be inclined to
9 hold it against a defendant or draw negative inferences if a
10 defendant decided not to testify, would you please raise your
11 hand.

12 PROSPECTIVE JUROR: I have a question about that.

13 THE COURT: Yes, yes, Mr. Bilse?

14 PROSPECTIVE JUROR: If there's a gap that could
15 have been explained if a defendant had testified, how -- how
16 would we take that then?

17 THE COURT: If there is a gap in the evidence, then
18 that's not the responsibility of the defendant to fill that
19 in.

20 PROSPECTIVE JUROR: Say there's an explanation that
21 could have been --

22 THE COURT: I'm sorry?

23 PROSPECTIVE JUROR: -- maybe not a gap in the
24 evidence but an issue that could have been resolved --

25 THE COURT: If --

1 PROSPECTIVE JUROR: -- if a defendant had spoken
2 and just that lack, it just remains a blank, a gap.

3 THE COURT: Well, it may well be a failure of proof
4 on the part of the government to fill in that gap. It's the
5 government's responsibility to present evidence on all of the
6 elements of a charge. Each charge is going to have certain
7 parts to it, certain what we call elements to -- of a crime,
8 and it's the government's responsibility to introduce
9 evidence sufficient to convince a jury beyond a reasonable
10 doubt that each of those elements have been met. So if
11 there's a gap in the evidence -- and I'm speaking very
12 generally because you're speaking very generally -- if
13 there's a gap in the evidence, you certainly may not say
14 well, gee, it might have been easy for the defendant to
15 answer this if the defendant had taken the stand. No, you
16 can't do that.

17 First of all -- first of all, you're -- you're not
18 just speculating at that point, you're already discussing it,
19 you're discussing it with other jurors in your hypothetical
20 situation, in the scenario that you're -- you can't do that.

21 PROSPECTIVE JUROR: But flipping it to say well,
22 the evidence was A, B, C, D that a person was at a certain
23 point and there was some evidence that they were there and if
24 there's nothing to refute that, then -- and a defendant could
25 have come up to speak to that point, you know, you take it

1 just as evidence and that's it then?

2 THE COURT: You look at the evidence that has been
3 brought out during the course of the trial. You cannot --
4 you cannot hold it -- in other words, in your hypothetical
5 situation, you seem to be saying, you know, there's evidence
6 that a defendant could have provided, an explanation -- let's
7 take it away from -- let's take it away from this case
8 entirely and talk about, you know, a case where we're dealing
9 with a -- I don't know -- a burglary, okay. And all of the
10 evidence points -- not all of the evidence but, you know, a
11 substantial amount of evidence points to a defendant in a
12 particular case. And the issue, you know, the real issue is
13 identity, who did it, did this defendant do it or was it
14 someone else. And you'd think it would be really easy if
15 this defendant had an alibi, a so-called alibi and take the
16 stand and tell everybody where he was at that particular
17 point in time. The defendant in that case would have
18 absolutely no obligation to do that. You would have to look
19 at the evidence produced by the government in that case and
20 decide on the basis of all the evidence whether the
21 government has proven by evidence beyond a reasonable doubt
22 that the particular defendant in that case was the guy.

23 PROSPECTIVE JUROR: Good explanation.

24 THE COURT: And there would never be any obligation
25 on the part of a defendant to take the stand and explain

1 where he was at the time the offense was committed.

2 PROSPECTIVE JUROR: Okay.

3 THE COURT: Do you understand? Do you accept that
4 though? I mean that's the important thing.

5 PROSPECTIVE JUROR: Yes, I do, yes.

6 THE COURT: You know, what you raise, Mr. Bilse, is
7 a very human reaction: Gee, you know, I'd be curious, I'd be
8 curious to know what a defendant might say if he did take the
9 stand and testify. But that's exactly the exercise you
10 cannot engage in because in a sense you're violating -- and
11 this is important for you to understand -- you're violating a
12 defendant's constitutional right when you do that, when you
13 hold a defendant's decision against him where that decision
14 has been not to testify.

15 PROSPECTIVE JUROR: That's what I was kind of
16 worried about.

17 THE COURT: Okay. But I'm going to keep this -- I
18 know that horse is sitting in the well right now and he's
19 pretty battered, but I'm going to beat a little bit more on
20 it because it's really -- it's really important.

21 You know, many of you would raise your hands saying
22 yeah, you'd be curious about what a defendant might have to
23 say if called to the stand, but you've got to cast aside that
24 curiosity; you cannot speculate what the testimony might have
25 been, you can't consider it, you can't discuss it. You'd

1 insist on the exact same thing, the exact same constitutional
2 protection if you were the one who was charged with an
3 offense and the government had its burden to prove you guilty
4 or a loved one guilty; you'd embrace that constitutional
5 principle. And so we all have a right to expect that it's
6 going to be honored in this and every other case.

7 So does anyone else have any concerns about these
8 last principles I've been discussing? If so, raise your
9 hand, please. If you feel that if you don't hear from a
10 defendant, or any of them, that this is going to influence
11 you, probably influence you, could very possibly influence
12 you, that you might be tempted to discuss it in the jury
13 deliberation room if you're on the jury, now's the time to
14 raise your hand and let us know. All right. I see no hands.

15 Okay. Let me -- we're going to start with the
16 attorneys here. Well, actually we're pretty close to noon.
17 I'm going to ask counsel -- perhaps rather than having Ms.
18 Moreno start and then interrupt her 10 or 15 minutes into it,
19 why don't we take our noon recess at this time. We will
20 resume -- at 1:15 I'm going to ask that you be outside the
21 courtroom doors so we can bring you in. Each side -- hold
22 on, ladies and gentlemen. Each side is going to have that
23 opportunity. They are limited in time. We've spent almost
24 two days on this already, and we will have our jurors
25 identified by the end of the day, by the close of business

1 today; that's our goal, and so we do appreciate you promptly
2 being back here.

3 Remember the admonition not to discuss the case or
4 make any decisions at this time. Remember where you're
5 seated. Enjoy your time off. We'll see you at 1:15.

6 (The jury panel left the courtroom.)

7 THE COURT: Okay. We're outside the presence of
8 all jurors. Ms. Moreno, are you planning on taking your --
9 all of your allotted time, do you think you will or -- I'm
10 not asking for a commitment, I'm just trying to get --

11 MS. MORENO: No, no, I'm trying to give my best
12 estimate, your Honor. I think, depending upon the dynamic,
13 maybe 40, 45 minutes.

14 THE COURT: Okay. Mr. Cole? I'm sorry. Mr. Ward?

15 MR. GHAPPOUR: Your Honor, I think it would be like
16 15 or 20 minutes.

17 THE COURT: Okay. I know they've been through an
18 awful lot; it's been pretty -- we have kind of an awful lot
19 of information here already. The reason I ask, Ms. Fontier
20 did inquire yesterday as to the possibility of going over
21 these deposition issues, getting rulings on those. I'd love
22 to be able to do that for counsel today. I've got to be out
23 of here at a fairly decent hour late this afternoon, and -- I
24 mean I can't hang with you to until 7:00 or 8:00 to get this
25 stuff done, so I want to do it, want to give Ms. Fontier a

1 chance to get her stuff -- and the government as well -- get
2 -- you know, know what's coming in and what's not coming in.
3 So to the extent we can be expeditious in going through the
4 rest of the voir dire, getting our jurors identified, letting
5 the rest go, then getting to our deposition issues, that
6 would serve us well.

7 MS. MORENO: I'll do my best, your Honor.

8 THE COURT: Okay. We'll see you at 1:15.

9 MS. FONTIER: Thank you, your Honor.

10 (There was a break in the proceedings.)

11 THE COURT: Good afternoon, ladies and gentlemen.
12 We're going to continue now. Now is the opportunity for
13 counsel to participate in this process. They each have some
14 time to ask you follow-up questions, perhaps a few questions
15 of their own. I can assure you they have no purpose in
16 unduly prying into your personal affairs or embarrassing you.
17 They're just merely trying to elicit a little more
18 information that might bear upon your ability to be fair and
19 impartial in this case. And so we will first proceed with
20 Ms. Moreno.

21 MS. MORENO: Thank you, your Honor. Good
22 afternoon, ladies and gentlemen. I'm going to stand here so
23 I can see everyone. Can everyone hear me? Okay. After 30
24 years of being a lawyer, I should think that I should know
25 how to project my voice, but if anyone has any problems

1 hearing what I'm saying, please let me know.

2 My name is Linda Moreno, and I have the privilege
3 of representing Mr. Mohamud. I will be asking a few of you
4 some more questions, not all of you; I won't be talking to
5 all of you. I'm going to try to do this as expeditiously as
6 possible, but what I need from you, what's important is that
7 you -- we have a real dialog, that you tell me what your
8 thoughts are in the particular questions that I'm going to go
9 into because only you know what's really in your heart, and
10 we are all here entitled to know on this day, in this
11 courtroom, what is in your heart with respect to certain
12 questions.

13 So as his Honor told you, I have no intention to
14 embarrass you or to be unduly intrusive, but -- but my -- the
15 gentlemen here have a right to know, just as you would, if
16 this is the right case for -- for you to sit on. There are
17 no right or wrong answers here; nothing that you say is
18 wrong. We're just looking for honesty, for candor, for you
19 to tell us how you really feel.

20 And the other thing about this process is any of
21 you who hear a juror say something that you want to comment
22 on or something that I've said, just raise your hand because
23 I want it to be a collaborative, dynamic process as much as
24 possible. All right? We know the ground rules.

25 So with that said, I understand that speaking in

1 front of a bunch of strangers, especially in front of a bunch
2 of strange lawyers, is not an easy thing to do, but it's my
3 job to ask you to please do that. So as I said, I'm not
4 going to speak to everyone, and really I'm going to focus my
5 inquire on either answers you gave to his Honor or some
6 answers that you gave in the questionnaire. And so I'd like
7 to start with Ms. Farkas. Good afternoon.

8 PROSPECTIVE JUROR: Good afternoon.

9 MS. MORENO: Can you hear me?

10 PROSPECTIVE JUROR: I can hear you very well.

11 MS. MORENO: Thank you. All right.

12 THE COURT: Excuse me. If either of the
13 interpreters has any difficulty hearing -- because I know Ms.
14 Moreno may have her back to you -- please let me know; raise
15 your hand or stand up or --

16 THE INTERPRETER: Thank you, your Honor. We
17 appreciate it.

18 THE COURT: -- and we'll let her know, sir. Thank
19 you.

20 MS. MORENO: Thank you. There you are. So when
21 you got the questionnaire -- and this is to everyone -- when
22 you got the questionnaire, Ms. Farkas, you knew that it was
23 important to be as candid as possible in the questionnaire?

24 PROSPECTIVE JUROR: Yes.

25 MS. MORENO: Is that fair?

1 PROSPECTIVE JUROR: Yes, it is.

2 MS. MORENO: And the reason you knew that, well,
3 one you signed an oath to be truthful, correct?

4 PROSPECTIVE JUROR: Correct.

5 MS. MORENO: And, in fact, you gave us some very
6 interesting answers to some of the questions, so I need to
7 explore a little bit of that with you, all right? I think
8 that in one of the questions -- and I'm going to refresh your
9 recollection --

10 THE COURT: Ms. Moreno, excuse me. We have one
11 juror who's having difficulty hearing you.

12 PROSPECTIVE JUROR: When you're facing that way, I
13 can't hear you.

14 THE COURT: It's a big courtroom, Ms. Alise We're
15 happy to give you a lapel mike.

16 MS. MORENO: That could be dangerous, your Honor,
17 but I'll take it.

18 THE COURT: Use the lectern. You can maybe move
19 one of those mikes around a little bit.

20 MS. MORENO: You can now hear me. I won't be
21 singing for you though; I'm not going there. All right.
22 Down to the really serious business here -- and this is for
23 us extremely serious -- you were asked in the questionnaire
24 "Do you have any experiences, feelings, impressions, or
25 beliefs about the United States's response to terrorism that

1 would make it difficult for you to listen with an open mind
2 and render a verdict based solely on the evidence presented
3 in court and the judge's legal instructions?" And you
4 checked "Yes," and you said "I think we are being far too
5 fair in most cases." And I'm assuming that you -- you really
6 thought about that answer; is that fair?

7 PROSPECTIVE JUROR: It's fair.

8 MS. MORENO: Okay. And, in fact, his Honor did
9 question you a little bit about that, and I was writing
10 notes, and you said -- you used words like you -- and
11 remember what I said, there are no wrong answers. And I can
12 tell that you're an opinionated person like we all are, and
13 I'm not asking you to defend your opinions, I'm just asking
14 you how you feel about them, all right? So you said -- you
15 used words like "too tolerant" I think when you were talking
16 to the Court, that a lot of Americans feel the need to be
17 stronger, not giving in to demands --

18 PROSPECTIVE JUROR: Uh-huh.

19 MS. MORENO: -- and what we need to know -- and of
20 course we all want to be perceived as being fair --

21 PROSPECTIVE JUROR: Of course.

22 MS. MORENO: -- but we're not. We are in some
23 situations; would you agree?

24 PROSPECTIVE JUROR: Of course.

25 MS. MORENO: And in other situations we're not

1 because we are flawed human beings, and so some cases would
2 be good for some jurors and other cases would not. And would
3 you agree with me that in a case that has charges that are
4 related to terrorism, this is a very -- can be a very
5 emotional issue for jurors. And it does -- and listen
6 because I'm going to be asking other jurors about this -- and
7 it does inspire strong feelings; would you agree with me?

8 PROSPECTIVE JUROR: I would agree.

9 MS. MORENO: When you wrote your questionnaire, you
10 expressed strong feelings; is that fair?

11 PROSPECTIVE JUROR: Fair.

12 MS. MORENO: And when his Honor was questioning
13 you, you -- you continued, and you talked about how in your
14 view we're a little perhaps too tolerant about what's going
15 on in the area of terrorism?

16 PROSPECTIVE JUROR: Correct.

17 MS. MORENO: I take you back to the question
18 because you were asked "Would it make it difficult for you to
19 listen with an open mind on this case," and you said "Yes."
20 And I don't think your opinion has changed, has it, from an
21 hour ago or two hours ago; is that fair?

22 PROSPECTIVE JUROR: Maybe I jumped on that a little
23 too fast. I feel I can judge this fairly as a juror in this
24 particular case. Not that I'm backtracking, I just feel that
25 so often when we hear things through the media, and what we

1 see has to do with extremist Muslims, that it brings us to a
2 boil on the surface, and that makes us feel extreme emotion.
3 To me, this isn't about extremists, but I believe my feelings
4 here would be fair. When I was filling out the
5 questionnaire, of course I was thinking of extremists, and
6 all Muslims of course are not extremists.

7 MS. MORENO: May I ask you though, but in --

8 PROSPECTIVE JUROR: Of course.

9 MS. MORENO: -- in some of these questions you were
10 just asked about Muslims, you weren't asked about extremists;
11 do you remember that?

12 PROSPECTIVE JUROR: Yes.

13 MS. MORENO: And in your response -- for instance,
14 you were asked what's your view, if any, of the Muslim or
15 Islamic faith, and what you said was "I think most are good
16 people, but they don't feel women are equal to men."

17 PROSPECTIVE JUROR: Correct.

18 MS. MORENO: So who is the they in that sentence?

19 PROSPECTIVE JUROR: Muslims generally.

20 MS. MORENO: Muslims generally?

21 PROSPECTIVE JUROR: Correct.

22 MS. MORENO: And so that's a perception that you
23 have?

24 PROSPECTIVE JUROR: Yes, right.

25 MS. MORENO: All right. And you know that all of

1 the gentlemen seated at this table are all Muslim?

2 PROSPECTIVE JUROR: Yes.

3 MS. MORENO: And so I guess you have a variety of
4 opinions -- by the way, which may be shared by others, which
5 is perfectly fine --

6 PROSPECTIVE JUROR: Right.

7 MS. MORENO: -- because I don't think you know any
8 Muslims, do you?

9 PROSPECTIVE JUROR: I do.

10 MS. MORENO: Oh, you do. That's right. How is it
11 that you have contact with them again?

12 PROSPECTIVE JUROR: Through some business and just
13 generally through vendors that I deal with.

14 MS. MORENO: Oh, that's right. Cab drivers you
15 said, et cetera?

16 PROSPECTIVE JUROR: Uh-huh.

17 MS. MORENO: Okay. And you also put socially. How
18 is that? Do you have any friends who are Muslims?

19 PROSPECTIVE JUROR: Friends of friends, not close
20 friends of mine.

21 MS. MORENO: Okay. In question 18, the next
22 question, you were asked "Is there anything about Islamic
23 teachings or doctrine that is personally offensive to you?"

24 PROSPECTIVE JUROR: Uh-huh.

25 MS. MORENO: And you said "Yes," and you said that

1 they can be taught at an early age to hate and that anyone
2 who doesn't agree with their doctrine is an infidel.

3 PROSPECTIVE JUROR: Uh-huh.

4 MS. MORENO: Now, in this case I dare say that
5 there will be evidence about Islam and about terrorism,
6 sharia law, his Honor mentioned al-Qaeda yesterday. How can
7 we feel confident that, given that milieu of what's coming
8 and given your answers, that you really could be fair, that
9 you could put these opinions aside and sort of really you'd
10 have to back away from what you wrote here.

11 PROSPECTIVE JUROR: Well, as the judge mentioned,
12 you're supposed to judge just what's going on in this
13 courtroom.

14 MS. MORENO: Right. That's right.

15 PROSPECTIVE JUROR: Correct.

16 MS. MORENO: Yes, that's right, but -- that's
17 absolutely, right. But some of us can't do that.

18 PROSPECTIVE JUROR: Well, you have to.

19 MS. MORENO: Well, and what I'm saying to you is
20 that I think that some people, a lot of people, me included,
21 have strongly held opinions and beliefs.

22 PROSPECTIVE JUROR: Uh-huh.

23 MS. MORENO: And it would -- I could not put them
24 aside. Are you saying you could put your opinions and
25 beliefs aside?

1 PROSPECTIVE JUROR: I hope I can.

2 MS. MORENO: Well, that's a great answer. I
3 appreciate that. "I hope I can." So you kind of believe so;
4 is -- would that be fair?

5 PROSPECTIVE JUROR: I believe so.

6 MS. MORENO: But what if we asked you, you have to
7 express an unequivocal commitment? It's a tough standard,
8 right? Do you agree?

9 PROSPECTIVE JUROR: I agree.

10 MS. MORENO: To being fair?

11 PROSPECTIVE JUROR: I agree.

12 MS. MORENO: And I think that that's what the law
13 requires. Given your answers -- and I hope you don't think
14 I'm picking on you because --

15 PROSPECTIVE JUROR: No, not at all.

16 MS. MORENO: -- please forgive me. I'm just --
17 it's important that we do this, and soon I'll be going on and
18 torturing someone else.

19 PROSPECTIVE JUROR: No, I don't, I don't find it
20 torture at all.

21 MS. MORENO: I appreciate that. I appreciate that.
22 But can you really tell us that you could do that and have an
23 unequivocal commitment to being fair?

24 PROSPECTIVE JUROR: Well, the only way I can base
25 it is I hope that someone could do that if I was in their

1 position.

2 MS. MORENO: I think that's a terrific answer, but
3 it sort of begs the question because to say that you hope you
4 could do it -- I think what I need to know is -- and if you
5 can't do it and if I'm not being fair, please tell me -- but
6 I don't think you can tell us unequivocally that you could be
7 fair given -- given -- given some, you know, widely held
8 opinions and beliefs about terrorism and et cetera in this
9 country and Islam.

10 PROSPECTIVE JUROR: Well, ma'am, if you feel you
11 know me better than I do, so be it.

12 MS. MORENO: No --

13 PROSPECTIVE JUROR: I just feel that I could do it.

14 MS. MORENO: Okay.

15 PROSPECTIVE JUROR: Okay.

16 MS. MORENO: All right. Thank you.

17 PROSPECTIVE JUROR: You're welcome.

18 MS. MORENO: Mr. Breier, hi.

19 PROSPECTIVE JUROR: Hi.

20 MS. MORENO: You're next. Mr. Breier, thank you
21 for your -- you have your mike?

22 PROSPECTIVE JUROR: Yes, ma'am.

23 MS. MORENO: Thank you for your service to our
24 country, Mr. Breier.

25 PROSPECTIVE JUROR: Thank you.

1 MS. MORENO: I have some questions to ask you which
2 I think if you were sitting in my client's position you would
3 want me to ask, and that is --

4 PROSPECTIVE JUROR: Sure.

5 MS. MORENO: -- you have what I call the trifecta
6 of radio listening hosts, and that would be Rush Limbaugh,
7 Sean Hannity, and Roger Hedgecock; is that fair?

8 PROSPECTIVE JUROR: That's fair.

9 MS. MORENO: Okay. Now, is it fair to say that Mr.
10 Limbaugh and Mr. Hannity are conservative voices in our
11 democracy, and they also have very strong negative opinions
12 about Islam; is that fair?

13 PROSPECTIVE JUROR: That's fair.

14 MS. MORENO: Okay. Mr. Hedgecock I don't know as
15 much, but he is also a conservative voice, correct?

16 PROSPECTIVE JUROR: Yes, yes.

17 MS. MORENO: But certainly Mr. Limbaugh has been
18 quite incendiary about his comments regarding Muslims,
19 correct?

20 PROSPECTIVE JUROR: Correct.

21 MS. MORENO: And Mr. Hannity has also been quite
22 vocal about Islam and in a very negative way; is that fair?

23 PROSPECTIVE JUROR: Yes.

24 MS. MORENO: And so I guess my obvious question to
25 you is how does that impact your view?

1 PROSPECTIVE JUROR: I don't think it impacts it at
2 all. I listen to talk radio, and conservative hosts pretty
3 much all that's on. I do have Sirius talk radio. I like to
4 listen to both sides of an opinion, so that's why I watch a
5 lot of CNN and I also watch Fox, but really radio-wise,
6 that's -- that's pretty much what's on in my car when I'm
7 driving. There's also a good mix of sports talk radio in
8 that too.

9 MS. MORENO: So when you hear Rush Limbaugh talk
10 about Imam Obama, right, in referring to our president --

11 PROSPECTIVE JUROR: Okay.

12 MS. MORENO: -- and that he's a Muslim -- I mean
13 you've heard him say things like that.

14 PROSPECTIVE JUROR: I have, yeah, and I think it's
15 a pretty ridiculous statement.

16 MS. MORENO: Right. You think that's ridiculous?

17 PROSPECTIVE JUROR: I do.

18 MS. MORENO: And his statements about Muslims in
19 general and the Quran in general?

20 PROSPECTIVE JUROR: I -- yeah, I disagree with that
21 point of view --

22 MS. MORENO: But you --

23 PROSPECTIVE JUROR: -- mostly. I agree with their
24 point of view maybe from a more financial side of things and
25 spending things, but socially and a lot of issues I'm very

1 opposite side of.

2 MS. MORENO: Well, but I see you don't -- you
3 didn't list Rachel Maddow in your listening choices or Jon
4 Stewart or the regular liberal lineup.

5 PROSPECTIVE JUROR: Well, it's hard to find those
6 on the radio. San Diego has a lot of conservative talk
7 radio; that just happens to be the stations that I get.

8 MS. MORENO: I guess what I need to know, sir, if
9 you were sitting at that table and a juror, you, being -- and
10 I think you've identified yourself as a Libertarian, a
11 moderate, an independent -- but there was a potential juror
12 who -- whose choices of listening reflected very poorly on
13 your faith, let's say, how could we be comfortable with that?
14 I mean what -- do you understand what I'm asking?

15 PROSPECTIVE JUROR: I understand what you're
16 asking. I mean the perception would be out there; I admit to
17 that. But I don't know what else I can say. I'm very -- I
18 think I'm well-rounded with the media outlets that I look at.
19 I do occasionally look at -- watch Rachel Maddow on MSNBC,
20 but I'd say I lean more to the right, so that's primarily why
21 I more gravitated towards the -- those stations.

22 MS. MORENO: Why do you think you would be a good
23 juror in this kind of a case?

24 PROSPECTIVE JUROR: I think I'm incredibly
25 impartial because I do listen to both sides of every

1 argument, I never take anything at face value. That's why I
2 listen to such -- I do listen to a wide variety of stations.

3 MS. MORENO: And is there some life experiences
4 that have formed your opinion that you're -- you listen to
5 both sides?

6 PROSPECTIVE JUROR: It's just kind of who I've
7 always been. I don't know. I've always tried to hear both
8 sides of a story.

9 MS. MORENO: Okay. What do you -- what's your view
10 on sharia law?

11 PROSPECTIVE JUROR: I don't know enough about it to
12 be honest with you. When I hear things about implementing
13 sharia in the United States, I think we have a constitution,
14 and that's what we should go by. But outside of the United
15 States I don't have an opinion.

16 MS. MORENO: Okay. And do you know anything about
17 sharia law?

18 PROSPECTIVE JUROR: I don't know much at all, no.

19 MS. MORENO: Okay. And so if the government, if
20 the prosecutor in this case mentions discusses brings
21 evidence of sharia into this case, what kind of an effect
22 would that have on you?

23 THE COURT: Well, I hope you're not asking him to
24 prejudge the --

25 MS. MORENO: No, your Honor.

1 PROSPECTIVE JUROR: Like I said, I don't really
2 have much -- I don't know many facts of sharia law, so I
3 would just have to take the evidence, what's presented to me
4 and go off that.

5 MS. MORENO: Okay. Is there anything else we
6 should know about you, Mr. Breier, that would be helpful --

7 PROSPECTIVE JUROR: That will --

8 MS. MORENO: -- in assisting us in making a fair
9 determination for our clients?

10 PROSPECTIVE JUROR: I don't -- I don't know. I
11 can't think of anything, no.

12 MS. MORENO: Okay. Thank you. Sorry. I'm getting
13 miked up. Ms. Stahl, Elizabeth -- there you are. Hi.

14 PROSPECTIVE JUROR: Hello.

15 MS. MORENO: I just want to ask you a few
16 questions. In your answers I think you self-identified as a
17 Christian conservative; is that fair?

18 PROSPECTIVE JUROR: Yes.

19 MS. MORENO: Would that be fair?

20 PROSPECTIVE JUROR: Conservative.

21 MS. MORENO: I think you checked the --

22 PROSPECTIVE JUROR: Christian, I checked Christian
23 conservative.

24 MS. MORENO: And why did you do that?

25 PROSPECTIVE JUROR: Because I'm a Christian --

1 MS. MORENO: Okay.

2 PROSPECTIVE JUROR: -- And I'm a conservative.

3 MS. MORENO: Okay. I mean how obvious is that,
4 right? I guess what I -- what we need to know is you also
5 talked about the places where you get your news --

6 PROSPECTIVE JUROR: Yes.

7 MS. MORENO: -- and the only place that you
8 indicated was Fox News.

9 PROSPECTIVE JUROR: My husband watches that all the
10 time, so that's what I watch.

11 MS. MORENO: Okay. And then you were asked what
12 station and shows do you listen to, and you indicated Bill
13 O'Reilly.

14 PROSPECTIVE JUROR: My husband.

15 MS. MORENO: All right. Well, what do you watch?
16 That's what we need to know.

17 PROSPECTIVE JUROR: I watch -- we don't really
18 watch much TV.

19 MS. MORENO: Okay.

20 PROSPECTIVE JUROR: But I like The Closer --

21 MS. MORENO: Me too.

22 PROSPECTIVE JUROR: -- until she left.

23 THE COURT: Well, we're not asking for general --

24 MS. MORENO: Right.

25 THE COURT: -- Television here or entertainment. I

1 think the question --

2 PROSPECTIVE JUROR: I like criminals or murders or
3 detectives.

4 MS. MORENO: Okay. You indicated that you had had
5 personal contact with Muslims; you said in school.

6 PROSPECTIVE JUROR: It was a travel agent school.
7 I don't really know if she was Muslim. She was from
8 Afghanistan, so I don't know, Muslim, Afghanistan, and she
9 wasn't in my class.

10 MS. MORENO: All right.

11 PROSPECTIVE JUROR: And I also forgot -- I think I
12 had a neighbor, but he moved --

13 MS. MORENO: Okay.

14 PROSPECTIVE JUROR: But we weren't -- just hi.

15 MS. MORENO: Did she cover?

16 PROSPECTIVE JUROR: Excuse me?

17 MS. MORENO: Do you know if --

18 PROSPECTIVE JUROR: Well, the husband -- it was the
19 husband. Oh, in my travel agent class?

20 MS. MORENO: Yes, ma'am.

21 PROSPECTIVE JUROR: Yes, she did.

22 MS. MORENO: All right. Do you have any particular
23 view of -- you may see in this case -- if you're picked to
24 sit on this jury, you may see in this case either witnesses
25 or audience members, females, who dress modestly and cover

1 wearing a head scarf. Would that affect your view of your
2 ability to be fair and impartial in this case?

3 PROSPECTIVE JUROR: Not at all.

4 MS. MORENO: What kind of reaction would you have
5 to that?

6 PROSPECTIVE JUROR: To affect me?

7 MS. MORENO: Uh-huh.

8 PROSPECTIVE JUROR: If they didn't have anything on
9 or something.

10 MS. MORENO: If they were naked. Help me. Okay.

11 THE COURT: You know what they say: The hole's
12 pretty deep, and you have the shovel in your hand.

13 MS. MORENO: Moving on. All right. Ms. Smith,
14 Susan Smith. Hi. How are you?

15 PROSPECTIVE JUROR: I'm good.

16 MS. MORENO: All right. So I need to go back to
17 one of the answers that you wrote in the questionnaire. And
18 I hope you can appreciate that I'm not --

19 PROSPECTIVE JUROR: Absolutely.

20 MS. MORENO: Berating it. Is it all right if I ask
21 you about that?

22 PROSPECTIVE JUROR: Oh, absolutely.

23 MS. MORENO: Okay. So you were asked what's your
24 view of the Muslim or Islamic faith, and you wrote "Concerns
25 about killing in the name of their god." And then you were

1 asked "How did you come to that view?" And you said "Life."

2 PROSPECTIVE JUROR: Correct.

3 MS. MORENO: So what did you mean? What life
4 experience has brought you --

5 PROSPECTIVE JUROR: Oh, right. Sorry. Go ahead.

6 MS. MORENO: No, no.

7 PROSPECTIVE JUROR: Not my life, just when the --
8 his Honor was asking, it has to do with the news that is
9 broadcast, that there are so many times when there is a
10 terrorist attack on some place that it turns out or the news
11 reports that it has been -- had something to do with the name
12 of Mohammad. I'm not -- I don't know the religion, and as I
13 stated earlier, I'm not a religious person, but doing
14 something that I would consider most of the world thinking is
15 a bad thing in the name of a god, whatever that god is,
16 doesn't make sense to me.

17 MS. MORENO: Thank you for that answer. Do you
18 have an opinion or a view or is it your impression that
19 Muslims have a different god than Christians? And I ask you
20 this because you wrote "their god," so that's why I'm asking.

21 PROSPECTIVE JUROR: And, honest, I don't know
22 because, again, I'm not -- I'm not a religious person, so I
23 don't know -- I hear -- and, again, this is just what I
24 hear -- is that their god is Mohammad, and I don't even know
25 if that's Muslim or if that's a different religion, to be

1 honest. And so they're calling -- they've got a name for
2 their god as compared to god that is more recognizable in
3 regards to the Christian religion.

4 MS. MORENO: Okay. Let me just switch gears a
5 little bit and just ask you about your answer regarding
6 believing a law enforcement officer over other witnesses.
7 You answered "No," and then you said "Depends on
8 circumstances. I would hope every law enforcement officer's
9 honest, but can't say I always believe them." So is it fair
10 to say from that answer that you don't automatically believe
11 a law enforcement officer over any other -- any other
12 witness?

13 PROSPECTIVE JUROR: No, I -- again, it would
14 depend -- I mean it would depend on what they're answering
15 the question to. If they -- I would think that they're as
16 honest as anybody else, and I would think that anybody else
17 up there that's sworn to tell the truth is telling the truth.
18 But I don't think one is more prominently honest than the
19 other. I think --

20 MS. MORENO: Okay.

21 PROSPECTIVE JUROR: -- they're all the same.

22 MS. MORENO: Okay. All right. Thank you. Juror
23 number 8, Lupe Flores. Hi. I wanted to explore a couple of
24 your answers --

25 PROSPECTIVE JUROR: Okay.

1 MS. MORENO: -- on this same question that I've
2 been asking others about. You were asked, "Is there anything
3 about Islamic teachings or doctrine that you're aware of that
4 is personally offensive to you" --

5 PROSPECTIVE JUROR: Uh-huh.

6 MS. MORENO: -- and you said "Yes." And then you
7 wrote "Not really personally because I know there are
8 extremists. I believe that they have a right to their faith
9 and beliefs, but harming anyone is offensive, whatever."
10 That doesn't explain so well --

11 PROSPECTIVE JUROR: That was --

12 MS. MORENO: Okay. So you were working your way
13 through it, right?

14 PROSPECTIVE JUROR: When I answered -- wait a
15 minute. Let me answer you. Is it -- me personally --
16 offensive to me. And as I said in the other questions, I
17 believe that -- I mean I know that all religions have harmed,
18 have -- so -- and it was really a tough one and it was also
19 tough -- really tough for me to on the spot formulate an
20 answer and express it with clarity.

21 MS. MORENO: You indicated on -- again, about if
22 you believe that Muslims generally support terrorist acts
23 carried out in the name of their religion, you didn't say yes
24 or no, but what you said was "Not generally, but some do."
25 What did you mean by that?

1 PROSPECTIVE JUROR: Right. Well, I think that
2 there are small groups that do, and I've lived long enough to
3 know that -- you know, I remember when I would hear the same
4 sorts of things in the news about Protestants and Catholics
5 in Ireland and England, and so I think just like there's
6 small factions there that I've heard the same things in the
7 news currently and more recently in -- not -- as I say, not
8 as a general, not as a whole.

9 MS. MORENO: So I guess what we need to know, now
10 that you've heard the indictment that his Honor read
11 yesterday and you know that the gentleman at the table are
12 all Muslim and they're being charged in various counts with
13 terrorism-related charges, and given what is widely shared --
14 many people have similar impressions -- tell us about your
15 ability to be fair and impartial in this kind of a case.

16 PROSPECTIVE JUROR: Well, I don't think that their
17 religion has anything to do with what the charges are and
18 those being proven. I mean it's did this criteria -- was
19 this criteria met --

20 MS. MORENO: Okay.

21 PROSPECTIVE JUROR: -- or not is what I'm going to
22 be answering to, not the fact that they're Muslim and the
23 criteria -- I mean that's not going to be weighed.

24 MS. MORENO: Okay. All right. Thank you so much.
25 Juror number 29, Michael Crowell. Hi. So I like this

1 question 4 because it asks jurors to choose who they identify
2 with politically, and you put moderate and you put
3 traditional conservatives. One juror put all of them, which
4 I'm still trying to get through, but --

5 PROSPECTIVE JUROR: I think on certain issues I'm
6 more of a moderate, and then on probably more of a business
7 and finance, it's more of a conservative.

8 MS. MORENO: Okay. I think in your response to his
9 Honor's colloquy earlier -- and he was touching upon some of
10 these issues -- I think you talked about family, religion,
11 and culture; do you remember that answer?

12 PROSPECTIVE JUROR: Yes.

13 MS. MORENO: What -- can you expand on that a
14 little bit for us?

15 PROSPECTIVE JUROR: Well, just some of the, you
16 know, things I've read about it, it's more the -- it's more
17 of a cultural thing probably than a religion, but typically
18 your family is number 1, and then your village or perhaps but
19 definitely your country is sort of your last, you know,
20 belief that you're -- you hold your beliefs last to your
21 country.

22 MS. MORENO: Are you talking about in the context
23 of a person who is Muslim?

24 PROSPECTIVE JUROR: Or people that come from that
25 culture. Muslim is more prominent.

1 MS. MORENO: I'm sorry. From like Somali or
2 African culture; is that what --

3 PROSPECTIVE JUROR: Yes.

4 MS. MORENO: And I think his Honor asked you if
5 given your answers, what you wrote, if any of that would
6 impact your ability to be fair and impartial, and I think you
7 said that you didn't believe so; is that fair?

8 PROSPECTIVE JUROR: That's fair, yes.

9 MS. MORENO: I mean is there any hesitation in your
10 mind; do you have any --

11 PROSPECTIVE JUROR: No. I think I just have a --
12 hopefully a better understanding of what some of the cultural
13 issues are there.

14 MS. MORENO: You have a better understanding?

15 PROSPECTIVE JUROR: I think I do.

16 MS. MORENO: And tell us why.

17 PROSPECTIVE JUROR: Just from reading the news,
18 keeping abreast of issues, that type of thing.

19 MS. MORENO: And with that understanding, is there
20 anything that we should -- we, the defense -- should be
21 concerned about or should know with the opinions that you
22 hold now after -- after of a reading and --

23 PROSPECTIVE JUROR: I don't believe so, but that's
24 my opinion.

25 MS. MORENO: No, and it's only your opinion that

1 matters because only you can tell us how you really think and
2 feel. All right. Thank you, sir. Juror number 36, Monica
3 Clark.

4 PROSPECTIVE JUROR: Yes, ma'am.

5 MS. MORENO: Hi. I think his -- when his Honor was
6 talking to you, he asked you the question about your answer
7 to the question about law enforcement officers.

8 PROSPECTIVE JUROR: Yes.

9 MS. MORENO: And I was listening very intently to
10 your answer, and I think what you said was -- and correct me
11 if I'm wrong -- they do tell the truth, the witness takes the
12 oath to tell the truth, and they tell their truth; do you
13 remember?

14 PROSPECTIVE JUROR: Not quite -- what I meant is
15 when you are sworn in, you are obligated, you're supposed to
16 tell the truth.

17 MS. MORENO: Right.

18 PROSPECTIVE JUROR: It's at least what our system
19 is based on. I don't think that policemen tell a better
20 truth or anything like that or more truthful or whatever.

21 MS. MORENO: Okay. So can you accept the scenario
22 that perhaps a law enforcement officer, an FBI agent, can get
23 on the stand, take the oath to tell the truth and not do
24 that?

25 PROSPECTIVE JUROR: That's why I said I don't think

1 they tell a better truth or more truth. I just think that
2 they are supposed to, they are sworn to tell the truth.

3 MS. MORENO: Right. Would you have any problems
4 judging the credibility of an FBI agent or a law enforcement
5 officer -- I mean and if you felt they were lying --

6 PROSPECTIVE JUROR: No, that's our -- I think
7 that's what we are supposed to be doing.

8 MS. MORENO: Okay. And do you have any hesitation
9 or any problems with about that?

10 PROSPECTIVE JUROR: No, ma'am.

11 MS. MORENO: Okay. Is there anything else that we
12 should know about you with respect to the questions that I've
13 been asking other jurors?

14 PROSPECTIVE JUROR: No, ma'am.

15 MS. MORENO: Okay. Thank you. Juror number 30,
16 Roger Brenzel. Hi, Mr. Brenzel. You had prior jury
17 experience; is that right?

18 PROSPECTIVE JUROR: Yes, I was on one trial.

19 MS. MORENO: Sorry?

20 PROSPECTIVE JUROR: I was actually on two trials.
21 I don't remember the first one I was on; I was an alternate,
22 wasn't part of the jury deliberation.

23 MS. MORENO: You weren't part of the deliberation?

24 PROSPECTIVE JUROR: No.

25 MS. MORENO: Do you remember what kind of case that

1 was?

2 PROSPECTIVE JUROR: It was so long ago, I don't
3 remember.

4 MS. MORENO: And the second trial?

5 PROSPECTIVE JUROR: What kind of case it was?

6 MS. MORENO: Yes.

7 PROSPECTIVE JUROR: It had to do with an inmate
8 that had died at one of the detention facilities, local ones,
9 and they were trying to prove that the sheriffs either
10 contributed to it or killed him or whatever, and they
11 couldn't prove it. I'm not -- we didn't see it, the jury
12 didn't.

13 MS. MORENO: Okay. Was there anything about that
14 experience that is now inspiring you to serve yet again on
15 another trial or do you want to run out of here?

16 PROSPECTIVE JUROR: A little bit of both.

17 MS. MORENO: Thank you. I appreciate -- I
18 appreciate the answer. Tell us about that.

19 PROSPECTIVE JUROR: What, about running out or
20 staying? I find it interesting, but I'm not a very social
21 person, and it's just -- I'm kind of an introvert.

22 MS. MORENO: All right. But the principle -- that
23 brings up an interesting point. If you're picked on a jury,
24 you understand that part of your duties would be to
25 deliberate with other jurors?

1 PROSPECTIVE JUROR: Yes.

2 MS. MORENO: And my sense is now you've done that
3 once already; is that right?

4 PROSPECTIVE JUROR: Yes, we did.

5 MS. MORENO: Okay. And you could do that easily --

6 PROSPECTIVE JUROR: Oh, yes.

7 MS. MORENO: -- correct?

8 PROSPECTIVE JUROR: Yes.

9 MS. MORENO: Is there anything else we should know
10 about you?

11 PROSPECTIVE JUROR: I don't think so, no.

12 MS. MORENO: -- that my client, any of these
13 gentlemen, should know about you, sir?

14 PROSPECTIVE JUROR: No.

15 MS. MORENO: Do you think you can be fair and
16 impartial?

17 PROSPECTIVE JUROR: Yes.

18 MS. MORENO: Is there any question in your mind?

19 PROSPECTIVE JUROR: No.

20 MS. MORENO: Thank you. Alice Young. Sorry to be
21 skipping around. Hi. Okay. How are you?

22 PROSPECTIVE JUROR: Good. How are you?

23 MS. MORENO: I'm good. I have my microphone and
24 I'm all right. You answered a particular -- I'm going to ask
25 you about some of your answers in the questionnaire. You

1 were asked if you knew any of the trial participants in this
2 case, and names were listed, and you said if I have, I've
3 forgotten. So I don't think you know or have remembered --

4 PROSPECTIVE JUROR: No, I do not.

5 MS. MORENO: -- any media about this case; is that
6 correct?

7 PROSPECTIVE JUROR: Correct.

8 MS. MORENO: Is that correct? I'm sorry.

9 PROSPECTIVE JUROR: Yes.

10 MS. MORENO: Okay. And then you were asked if you
11 saw, read, or heard anything about this case, what was your
12 personal reaction to it, and you indicated "Very sad to see
13 these things happening in our country." Do you remember
14 writing that?

15 PROSPECTIVE JUROR: Yeah. What was the question
16 again?

17 MS. MORENO: I'll restate it. You were asked if
18 you saw, read, or heard anything about this case, what was
19 your personal reaction to it -- that was the question -- and
20 you wrote "Very sad to see these things happening in our
21 country."

22 PROSPECTIVE JUROR: Yeah.

23 MS. MORENO: Okay. So the question was asking you
24 about this case, and you talked about these things happening
25 in our country which make you sad.

1 PROSPECTIVE JUROR: Right.

2 MS. MORENO: So what were you --

3 PROSPECTIVE JUROR: Which is what you hear on the
4 news.

5 MS. MORENO: Okay. And what things do you hear on
6 the news that you're referring to?

7 PROSPECTIVE JUROR: Well, just all the killings
8 going on, you know, around the country, and, you know, like
9 9-11, those type of things.

10 MS. MORENO: Okay. Is there -- do you -- when you
11 brought up 9-11 just now, was there a -- besides how it
12 affected all of us --

13 PROSPECTIVE JUROR: Yes.

14 MS. MORENO: -- in this country, was there another
15 more personal connection --

16 PROSPECTIVE JUROR: No.

17 MS. MORENO: -- that you had to it?

18 PROSPECTIVE JUROR: No.

19 MS. MORENO: Okay. And do you know any Muslims?

20 PROSPECTIVE JUROR: No.

21 MS. MORENO: What have you been thinking -- sitting
22 here and listening to the indictment and these charges and
23 al-Qaeda references that may come in, sharia law, terrorism,
24 al-Shabaab, what have you been thinking?

25 PROSPECTIVE JUROR: Well, you know, like I said, I

1 hate to see these things happening, you know, to our country,
2 but I think I can, you know, be honest.

3 MS. MORENO: Okay. And there's no doubt; remember,
4 there's no right or wrong answers --

5 PROSPECTIVE JUROR: No.

6 MS. MORENO: -- it's just, as you say, just being
7 honest?

8 PROSPECTIVE JUROR: Right.

9 MS. MORENO: But I guess what we need to know is in
10 this case we're not talking about 9-11.

11 PROSPECTIVE JUROR: No, I know that. I know that.

12 MS. MORENO: Okay. Is there something about though
13 this case that troubles you in a sense just hearing the
14 charges in the indictment?

15 PROSPECTIVE JUROR: Yeah, maybe it does.

16 MS. MORENO: Okay. I really I know how hard this
17 is; it's very hard --

18 PROSPECTIVE JUROR: Yes.

19 MS. MORENO: And jurors are so courageous. So
20 please share with us what you're thinking.

21 PROSPECTIVE JUROR: Well, I would hope that I could
22 be -- listen to both sides of the story and, you know, be
23 fair.

24 MS. MORENO: Okay. So -- and I'm sure his Honor
25 will so instruct, but in a criminal case, you may not hear,

1 quote, both sides of the story.

2 PROSPECTIVE JUROR: Uh-huh.

3 MS. MORENO: So you may not hear anything from the
4 defense because the burden of proof is only and always with
5 the government, okay?

6 PROSPECTIVE JUROR: Uh-huh.

7 MS. MORENO: Now, would that be difficult for you
8 to accept because you'd want to hear what the defense has to
9 say?

10 PROSPECTIVE JUROR: Yeah.

11 MS. MORENO: Okay. And lots of people feel that
12 way, all right, and I really appreciate you letting me talk
13 to you about this. But is it fair to say that if you didn't
14 hear anything from the defense, that that would be difficult
15 for you to put aside?

16 PROSPECTIVE JUROR: Probably.

17 MS. MORENO: Okay. And so jumping back a little
18 bit, with respect to the charges in the case and the things
19 that you've heard referenced or alluded to, can you really
20 tell us that you could be completely fair and impartial in
21 this case?

22 PROSPECTIVE JUROR: Well, like I said, I hope that
23 I could, you know, because I mean I don't know them from
24 Adam.

25 MS. MORENO: Of course. Of course. But you

1 understand that in order to be able to sit --

2 PROSPECTIVE JUROR: Right, I understand.

3 MS. MORENO: -- you have to have an unequivocal
4 commitment to be fair and impartial. I guess what I'm
5 hearing -- and you tell me if I'm wrong -- you don't have
6 that kind of commitment?

7 PROSPECTIVE JUROR: Well, I thought I did when I
8 came in to all this.

9 MS. MORENO: Okay. And I guess what I need to know
10 is -- so your mind has changed now; would that be fair?

11 PROSPECTIVE JUROR: Yeah, I guess so.

12 MS. MORENO: I really appreciate your candor.

13 THE COURT: If you would hold on, counsel, for just
14 a moment. Ma'am, we don't -- we don't want you to feel
15 you've got to agree with counsel or disagree with counsel.
16 Her questions are important. Up until this particular point
17 in time, you've indicated that you can be fair and impartial,
18 that you can base your decision in this case on the evidence,
19 that you accept the constitutional principles I spent quite a
20 bit of time explaining to you and others. And so I don't
21 want -- if your -- if your mind has changed or upon further
22 reflection, listening to the questions of counsel, you have
23 some doubt as to whether you can be fair and impartial, you
24 have some doubt as to whether or not you can set aside some
25 of those -- some of those feelings that you might have that

1 were reflected in a few of the responses to the
2 questionnaire, then you should tell us. But don't feel you
3 need to agree with counsel just because of the way she's
4 framing questions or just because of the way the government
5 may be framing questions at a later point in time. You need
6 to kind of dig down deeply right now and give us your final
7 feeling, your decision as to whether you can be fair and
8 impartial based on what you -- based on what you've been
9 instructed, based on your -- how you know yourself to be,
10 based on everything you've heard in the courtroom.

11 PROSPECTIVE JUROR: Yeah, I think I could be fair
12 and impartial.

13 THE COURT: Well, Ms. Moreno's going to -- not
14 going to be happy, particularly with that last answer, and
15 she's going to think well, wait a minute, that you're
16 agreeing with whoever --

17 PROSPECTIVE JUROR: I think I could.

18 THE COURT: -- that you're agreeing with whoever
19 happens to be speaking --

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: -- at the time. But I don't want -- I
22 don't want you to feel -- I don't want anyone to feel that
23 they're being led down a primrose path by anybody here, by me
24 or any of the attorneys that may be talking to you. This is
25 important stuff. It's important to both sides. Everybody is

1 entitled to have a fair trial and get a fair shake in terms
2 of the consideration of the evidence and all of that. So if
3 you're having doubts now about your ability to be completely
4 fair and impartial, tell us. It's your duty to tell us. If
5 you're -- if you're ready to make a commitment to be fair and
6 impartial, tell us; if you have any doubt about your ability
7 to fairly sit on the case, tell us that and then we won't
8 take up any more of your time at this point.

9 PROSPECTIVE JUROR: Well, I'm not sure now, so --

10 THE COURT: You're just thoroughly confused at this
11 point?

12 PROSPECTIVE JUROR: I'm confused.

13 THE COURT: All right. I'm going to -- I'm going
14 to excuse you, Ms. Young. I think it's unfortunate the way
15 that -- the way that some of this went for you if in fact you
16 felt an obligation to agree with anyone here. But if you
17 feel in your heart of hearts that this is not an appropriate
18 case for you, you can't be fair and impartial because of
19 what's happened in the country -- sad things have happened in
20 the country that you made reference to -- then this is not a
21 good case for to you sit on.

22 I'll excuse you for cause. I'll ask that you just
23 put the microphone down there on the seat. We'll call
24 somebody else. We have other jurors. We'll call somebody
25 else, and then we'll continue on. And I want to thank you

1 for your time and service. If you could go back to the jury
2 lounge, they'll have further information about your immediate
3 future. But I'm going to ask you to go back there. Okay. I
4 believe Mr. Rodriguez is next, Gaby.

5 THE CLERK: Ryan Rodriguez.

6 THE COURT: Good afternoon, Mr. Rodriguez. If
7 you'd take a seat there. Ms. Moreno, I'm just going to take
8 a minute here, so you can remain right there where you are.
9 I know you've got very limited time now, and I'm going to ask
10 Mr. Rodriguez just a few things here. Mr. Rodriguez, have
11 you heard all of my instructions and the questions that I and
12 counsel have asked so far?

13 PROSPECTIVE JUROR: Yes, your Honor.

14 THE COURT: Okay. Can you be and fair and
15 impartial if selected on this case?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Have any doubt about that?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Okay. You've heard the areas of
20 concern that I've certainly emphasized, the areas of
21 constitutional and the presumption of innocence and all of
22 the all of the rights that emanate out from that presumption
23 of innocence, including a defendant in a criminal case has an
24 absolute right to decide not to testify and that that can
25 never be construed negatively against a defendant. You know

1 what some of the -- some of the issues are that we've
2 discussed. We've talked about the ability of jurors to
3 assess the believability, the credibility, of witnesses by
4 the same standards they would use for all other witnesses,
5 that no one should take the stand with a leg up simply
6 because of the position they hold, whether in law enforcement
7 or not, expert witness or not, someone affiliated with one
8 side of the case or the other. Can you apply those
9 principles as well?

10 PROSPECTIVE JUROR: Yes, sir, I can.

11 THE COURT: Okay. I'm just going to go through --
12 I'm going to go through your questionnaire here. You
13 indicated that you've been with the Auto Club, and a question
14 I had was for how long.

15 PROSPECTIVE JUROR: Six years.

16 THE COURT: And has it always been in adjusting
17 claims, sir?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Okay. And before that?

20 PROSPECTIVE JUROR: I was in college, food server.

21 THE COURT: Okay. In connection with that matter
22 in 1995, did you feel as though you were fairly handled by
23 the justice system?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Okay. All right. Ms. Moreno, if you'd

1 please continue. And the time really is limited for you at
2 this point. Thank you.

3 MS. MORENO: Thank you, sir. Mr. Rodriguez, let me
4 just quickly -- I have one question for you --

5 PROSPECTIVE JUROR: Okay.

6 MS. MORENO: -- with respect to an answer you gave
7 on your questionnaire regarding whether you would believe law
8 enforcement over other witnesses -- and I'm sure you've been
9 listening to the answers -- and you said -- you said "No,"
10 you said "No," and then you said "There are always two sides
11 to every story. I like to hear and see people as they
12 explain themselves." Okay. So remember the discussion I was
13 asking a few minutes ago about the fact that in a criminal
14 case the burden sits with the government --

15 PROSPECTIVE JUROR: Yes.

16 MS. MORENO: -- and the defense has no obligation
17 to tell any story, right? What do you think about that?

18 PROSPECTIVE JUROR: I understand that. I
19 understand the judicial system.

20 MS. MORENO: Okay. How is it that you understand
21 the judicial system? Do you have prior jury experience?

22 PROSPECTIVE JUROR: No. I've taken some criminal
23 classes through my college education.

24 MS. MORENO: Okay. To be what, a defense lawyer?

25 PROSPECTIVE JUROR: No, not to be on the legal

1 side. More towards just to learn about the criminalistics,
2 criminal law --

3 MS. MORENO: Okay. All right.

4 PROSPECTIVE JUROR: -- not a lawyer.

5 MS. MORENO: So when you -- just so I'm clear on
6 your position on the obligation of the government -- don't
7 give it back yet. Oh, it doesn't work? Okay. Sorry. I can
8 hear you. Can you hear me?

9 PROSPECTIVE JUROR: Yes.

10 MS. MORENO: Would it be difficult for you to
11 accept -- if you're picked as a juror and you hear nothing
12 from the defense -- no evidence, no witnesses, nothing -- you
13 hear only from the government, would it be difficult for you
14 to accept that the defense doesn't have to tell you anything
15 or produce any evidence or any witnesses?

16 PROSPECTIVE JUROR: Not at all.

17 MS. MORENO: It's counterintuitive though, isn't
18 it?

19 PROSPECTIVE JUROR: No.

20 MS. MORENO: So you have no problems with that?

21 PROSPECTIVE JUROR: Not at all.

22 MS. MORENO: Just have a couple more, your Honor.

23 THE COURT: Okay.

24 MS. MORENO: Cody (sic) Buckner, juror number 17?

25 PROSPECTIVE JUROR: Corey.

1 MS. MORENO: Corey. I'm so sorry, sir. Hi. You
2 had indicated in the questionnaire that you had -- it asks,
3 "Have you had personal contact with people who are Muslims or
4 of Somali descent," and you said "Yes." And then you -- and
5 then you were asked "In what context?" And you said "In
6 place of worship." Do you remember?

7 PROSPECTIVE JUROR: I think I said in the
8 workplace.

9 MS. MORENO: May I show him his --

10 THE COURT: Okay, sure.

11 MS. MORENO: May I approach him, your Honor? Would
12 you like to see your answer or would accept my
13 representation?

14 PROSPECTIVE JUROR: Well, I'm not sure what the
15 question -- the answer to the question --

16 MS. MORENO: All right. So I'll ask it again. You
17 were asked "Have you had personal contact with people who are
18 Muslims or of Somali descent?" And you said "Yes."

19 PROSPECTIVE JUROR: Yes.

20 MS. MORENO: And then it says "If yes, in what
21 context?" And you were given a number of choices: In the
22 family, in the neighborhood, in organizations, through work
23 business, in place of worship, in school, and other. And you
24 checked "In place of worship."

25 PROSPECTIVE JUROR: Well, that was probably a

1 mistake. I meant in the workplace.

2 MS. MORENO: Okay. Oh, you meant in the workplace?

3 PROSPECTIVE JUROR: Yes.

4 MS. MORENO: Okay. Can you -- can you expand on
5 that?

6 PROSPECTIVE JUROR: Yes. One of the ladies that's
7 in human resources is from Turkey, and she and I work closely
8 together.

9 MS. MORENO: You work closely with her?

10 PROSPECTIVE JUROR: Yes.

11 MS. MORENO: Okay. And is she Muslim?

12 PROSPECTIVE JUROR: I believe she is, yes.

13 MS. MORENO: Does she cover?

14 PROSPECTIVE JUROR: No, she does not.

15 MS. MORENO: Okay. All right. Is there anything
16 about that experience that would affect your ability to be
17 fair and impartial?

18 PROSPECTIVE JUROR: None whatsoever.

19 MS. MORENO: All right. What is -- what is Rod and
20 Gun Club?

21 PROSPECTIVE JUROR: South Bay Rod and Gun Club?
22 It's a shooting range down in Dulzura.

23 MS. MORENO: Just a quick moment, your Honor. Oh,
24 you also -- we asked if you've had any training or taken any
25 courses or seminars, and you checked "Religion." What can

1 you tell us about that?

2 PROSPECTIVE JUROR: Well, in our church we have
3 Bible studies.

4 MS. MORENO: Okay. All right. So that's what you
5 were referring to?

6 PROSPECTIVE JUROR: Yes.

7 MS. MORENO: Thank you. Juror number 11, Ron Meza.
8 No? Am I wrong?

9 MS. FONTIER: Rosa Meza.

10 MS. MORENO: Rosa Meza. I'm so sorry. So sorry.
11 Ms. Meza, in your questionnaire you were asked if -- "Do you
12 have an opinion whether Muslims are more violent than
13 non-Muslims," and you checked both yes and no, and then you
14 wrote, "Not necessary more violent but consequences of their
15 belief." Can you just expand on that for us.

16 PROSPECTIVE JUROR: I think what I meant there,
17 it's not personally not all of them, some of them have belief
18 because of their religion, but it doesn't mean that all of
19 them. I think it's, you know, what happens, it's like a
20 consequence of what they believe. I mean they have a reason
21 they have -- they do it because of something their god or
22 whatever, so it's a consequence of their beliefs.

23 MS. MORENO: I'm just trying to understand what you
24 mean by that.

25 PROSPECTIVE JUROR: Yeah, me too. I don't think

1 because they're Muslim they're violent. I think it would be
2 like any other religion, any other ethnicity. They have
3 their beliefs or their customs or whatever that makes them do
4 things but not because the person. I don't know if you know
5 what I mean.

6 MS. MORENO: Okay. All right. I appreciate your
7 answer. I just -- one final question. You asked if you had
8 personal contact with Muslims, and you said "No," and then
9 you checked "In school."

10 PROSPECTIVE JUROR: Oh.

11 MS. MORENO: Do you --

12 PROSPECTIVE JUROR: No.

13 MS. MORENO: Have you had any contact --

14 PROSPECTIVE JUROR: In college.

15 MS. MORENO: -- or experience with Muslims or
16 Somalis?

17 PROSPECTIVE JUROR: I think he was Muslim. He was
18 a student. We went to school together, but he was a class
19 that we have, a business class.

20 MS. MORENO: Thank you. Thank you so much. May I
21 have a brief moment, your Honor, very brief? I want to thank
22 the panel members very much. Very difficult. We really
23 appreciate your candor. This is very important.

24 THE COURT: Ms. Moreno, would you hold up just a
25 moment?

1 MS. MORENO: Yes.

2 THE COURT: Ms. Meza, I was a little confused by
3 one of your more recent answers to a question posed by Ms.
4 Moreno. I don't know if you said this or not. Did you say
5 that Muslims are violent or all Muslims are violent? It's a
6 part --

7 PROSPECTIVE JUROR: No.

8 THE COURT: Okay. I may have missed the few words
9 you might have said, to say all Muslims are violent and then
10 you proceeded with the answer, and I think you tried to
11 say --

12 PROSPECTIVE JUROR: Maybe I said it as a negative
13 or a positive, I don't know.

14 THE COURT: Okay. All right.

15 PROSPECTIVE JUROR: No.

16 THE COURT: Just tell me what your views are on
17 that once again.

18 PROSPECTIVE JUROR: I think I even got myself
19 confused with the answer that I gave. I don't think they're
20 more violent than anybody else.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: That was the question?

23 THE COURT: Yeah, that's the question I'm asking
24 you about, yeah. Then I just misinterpreted what you said.
25 You were equating them to other people, other religions. You

1 were saying they're similar, not all people are violent in
2 one religion or another religion; is that what you were --

3 PROSPECTIVE JUROR: Yes, since -- the question was
4 confusing because it was specifically to Muslims.

5 MS. MORENO: Yes.

6 PROSPECTIVE JUROR: So it's not that I think
7 they're violent, but what we see on TV and what the news and
8 all that, it happens to be like terrorists. It's not because
9 they're Muslim. I mean it's not because they're violent,
10 maybe because their religion.

11 MS. MORENO: Okay.

12 PROSPECTIVE JUROR: It's a consequence of what
13 there --

14 THE COURT: would it be fair to say --

15 PROSPECTIVE JUROR: It's not the person.

16 THE COURT: Would it be fair to say -- I think what
17 you're saying is what you see on TV in some of these
18 instances, they're extremists --

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: -- and they're acting in ways that are
21 violent and terrible and perhaps in other ways, but it's not
22 a function, it's not the result of what their religion is,
23 they are extremists who happened to be Muslim rather than
24 they're doing what they're doing because they're Muslim?

25 PROSPECTIVE JUROR: Not violent because they're

1 Muslim but because of what we see on TV, which means yes.

2 THE COURT: Okay. What you see on TV, the images
3 of what you see on TV and evidence of terrorist acts, whether
4 they're here or in any part of the world, could they
5 influence you in any way in this case in your determination
6 of the evidence?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Are you sure about that?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Are you prepared to give both sides a
11 fair trial in this case?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Can you --

14 PROSPECTIVE JUROR: If you hear both sides.

15 THE COURT: Well --

16 PROSPECTIVE JUROR: If not, we'll deal with one.

17 THE COURT: No, no, no. You don't need to hear
18 both sides. You need to give both sides -- I mean the
19 government's entitled to be fairly heard as well; the
20 government's entitled to have their evidence fairly
21 considered.

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: The defense is entitled to take
24 whatever evidence comes out in the course of the trial,
25 whether it's all from the government, part from the

1 government, part from the defense -- even though they have no
2 obligation to present evidence, the defense is entitled to
3 have jurors fairly consider the evidence. Both sides are
4 entitled to have jurors fairly consider the evidence in the
5 case regardless of what side that evidence may come from. Do
6 you feel you can do that?

7 PROSPECTIVE JUROR: Of course.

8 THE COURT: Okay. Thank you. Okay. Mr. Ward, why
9 don't we get started with you. Perhaps we can finish up with
10 you before we take our afternoon recess.

11 MR. WARD: Thank you, your Honor. I'm not sure
12 this is going to be any better, but I was going to try and do
13 from the lectern. Is it okay if I push the microphone this
14 way?

15 THE COURT: Sure.

16 MR. WARD: Thank you. Ladies and gentlemen, thank
17 you for continuing to bear with us during this process. And
18 what I'm going to do for the next maybe 10, 15 minutes is
19 just ask you four general questions that it would be good if
20 everybody could pay attention to, and then I might have some
21 follow-up questions on those four general questions, and in a
22 couple instances have a -- some follow-up questions to jurors
23 on -- or prospective jurors -- from their questionnaires.

24 So let me get started with the general questions.
25 And just to let you know, you've heard a lot about the FBI,

1 the Federal Bureau of Investigation, just during the process
2 of jury selection. Well, they're the federal agency that
3 investigates federal crimes of terrorism, which is why
4 they're involved in this case. And what I need to know from
5 each of you is whether or not you've had any experiences or
6 feelings, opinions, or impressions from whatever source it
7 might be about the way the FBI conducts terrorism
8 investigations that might make it difficult for you to be
9 fair to either the government or to the defendants. So does
10 anybody have some strong feeling one way or the other about
11 the FBI's involvement in terrorism cases?

12 (No verbal response.)

13 MR. WARD: Okay. This next question is just a
14 little bit different than what was on your questionnaire, and
15 it just deals with anybody who's had training in the law. So
16 my question is have you, a family member, or even a close
17 friend had any kind of training in the law, law school or law
18 enforcement. Yes, ma'am. It's Ms. Freni.

19 PROSPECTIVE JUROR: My husband.

20 MR. WARD: Right. Okay. Thank you. And sure.
21 Yes, sir?

22 PROSPECTIVE JUROR: I'm an attorney.

23 MR. WARD: Right, that was -- and then we have a
24 question here, a response here.

25 PROSPECTIVE JUROR: My son.

1 MR. WARD: Right, we heard about that. And I'm
2 sorry. That's right. Ms. Stahl.

3 PROSPECTIVE JUROR: My niece. She works in
4 probation.

5 MR. WARD: Okay. Thank you.

6 THE REPORTER: I didn't hear that. I'm sorry.

7 MR. WARD: Okay. Can you go ahead and --

8 PROSPECTIVE JUROR: My father-in-law.

9 MR. WARD: And that is Ms. Clark?

10 PROSPECTIVE JUROR: Yes.

11 MR. WARD: -- juror number 36. Maybe I should
12 rephrase this. Other than -- the question that we asked is a
13 little bit broader than the question that was on the
14 questionnaire so that you've already responded as to someone
15 who's had training in the law -- for instance, you know,
16 Ms. Freni's response -- then I don't need to hear further
17 from you. With that amendment, Mr. Bilse, do you still have
18 a yes answer?

19 PROSPECTIVE JUROR: I may not have put down that my
20 old roommate became an officer.

21 MR. WARD: A police officer?

22 PROSPECTIVE JUROR: Yeah.

23 MR. WARD: With what agency?

24 PROSPECTIVE JUROR: Santa Barbara Sheriff.

25 MR. WARD: Okay. Anything about that that would

1 affect your ability to be fair?

2 PROSPECTIVE JUROR: No, no.

3 MR. WARD: Okay. To either side?

4 PROSPECTIVE JUROR: Correct.

5 MR. WARD: Okay. And right next to Mr. Bilse, Ms.
6 Farkas, with that amendment?

7 PROSPECTIVE JUROR: No change.

8 MR. WARD: Okay. I apologize. I probably should
9 have narrowed the question. Okay. I want to ask a question
10 that's actually more about the logistics of the trial. In
11 this case a lot of the evidence is going to be recordings of
12 telephone calls, and they're predominantly -- they are almost
13 entirely in Somali. And you'll have some aids; you'll have a
14 binder of transcripts, and we'll have -- we'll have a way of
15 projecting the transcript upon a screen so you can follow
16 along with an English translation. But knowing that, does
17 anybody believe that they would have difficulty either
18 reading the transcripts, okay, either in a binder in front of
19 them or on a monitor, or following along with that kind of
20 evidence? Sure. I'm sorry. That's Ms. Cleavenger, right?

21 PROSPECTIVE JUROR: Yes.

22 MR. WARD: Sure. Go ahead and tell me.

23 PROSPECTIVE JUROR: I don't know. I -- it would be
24 hard for me to like know what -- what you guys are talking
25 about, so --

1 MR. WARD: Right. But if I were -- and maybe I
2 didn't make this clear. The audio will be in the foreign
3 language; it will be in Somali. We will give you a
4 transcript of an English translation of the Somali, so you'll
5 be following along on a script either in a binder that you'll
6 have in front of you or on a monitor or screen with the
7 English. So do you still have some concerns about your
8 ability to follow along in the evidence knowing that you'll
9 have the English?

10 PROSPECTIVE JUROR: Yeah, I think so because -- I
11 mean it's -- I still don't know about much stuff, so it's
12 hard for me to like translate stuff.

13 THE COURT: Well, I'm having a hard time
14 understanding what you're saying, Ms. Cleavenger. You won't
15 have to translate anything. The audio, what you'll hear, is
16 a conversation taking place in Somali, which I assume is a
17 language you do not understand.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: But at the same time -- is there a
20 rolling transcript, Mr. Ward? Is there a -- this is a
21 Sanctions-based program, is it not?

22 MR. WARD: Yes, it would be, your Honor.

23 THE COURT: So you'll hear some sound, but you'll
24 see the English on the screen that corresponds to the
25 language that is -- the foreign language that you're hearing.

1 So you're basically not trying to decipher what the Somali
2 language is saying, you're reading -- merely reading the
3 English translation of that. Now, the question for you is
4 would you have a difficult time -- would it be difficult or
5 impossible for you to do that?

6 PROSPECTIVE JUROR: Yeah because some words are --
7 like I don't understand some of the words.

8 THE COURT: Like what? What don't you think you'd
9 understand?

10 PROSPECTIVE JUROR: Well, like for the
11 questionnaire, some of it was confusing to me.

12 THE COURT: The what now?

13 PROSPECTIVE JUROR: The questionnaire was -- some
14 of it was really confusing to me.

15 THE COURT: Okay. Can be a little bit more
16 helpful? Would you like to see a copy of the questionnaire
17 and you can tell us what was confusing to you; that might be
18 helpful to you just so that we know this is perhaps not the
19 kind of case for you. We can just elaborate a little bit.
20 Here, Mr. Ward, this is a generic --

21 MS. HAN: I got one, your Honor.

22 THE COURT: All right.

23 PROSPECTIVE JUROR: Well, like some of the big
24 words, I -- to me it's hard for me to like understand what
25 they are. That's just how I've been pretty much my whole

1 life.

2 THE COURT: Okay. Let me get your questionnaire
3 out and see if I can -- counsel, just in the interest of
4 time -- I've got yours now. Thank you. You've got some
5 college education?

6 PROSPECTIVE JUROR: Yeah, some.

7 THE COURT: Okay. You are -- I assume you
8 graduated high school.

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And how much college did you take?

11 PROSPECTIVE JUROR: Just one year.

12 THE COURT: Okay. You just took some general
13 courses?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Just so that I have a general
16 idea so that I can make an informed decision, I'm going to
17 have your own questionnaire, a copy of your own questionnaire
18 shown to you, and if you could just indicate what questions
19 or words you had difficulty with. I certainly don't want to
20 embarrass you, but this would give me a better idea.

21 PROSPECTIVE JUROR: I have -- I understood like
22 most like all the questions. I just -- like big words and
23 stuff that you're saying and stuff like that I -- like I
24 don't understand some of them.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR: That's just my --

2 THE COURT: Ms. Cleavenger, let me just kind of
3 shift the conversation a little bit. I've been talking about
4 some concepts during jury selection in this case like the
5 presumption of innocence, those kinds of things. Have you
6 been understanding what I've been talking about when I've --

7 PROSPECTIVE JUROR: Well, some of them, not -- like
8 most of them I have but not all of them.

9 THE COURT: Okay. Anything in particular that I
10 may have been talking about or Ms. Moreno may have been
11 talking about that gave you difficulty like after a question
12 or after a statement, you thought to yourself I don't have a
13 clue as to what that means?

14 PROSPECTIVE JUROR: Some of them, yeah.

15 THE COURT: Okay. All right. Ms. Cleavenger, what
16 I'm going to do is I'm going to dismiss you from this trial.
17 I very much appreciate your candor in this regard; it's
18 important. I hope I didn't embarrass you; that certainly
19 wasn't our purpose here.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: But if you feel that it would just
22 present some kind of a problem for you to follow an English
23 rolling script of corresponding Somali language that's being
24 spoken, I don't want to make this too difficult for anyone,
25 and it's important that we have a jury consisting of 12

1 people, not 11 -- or 11 people that understand and
2 somebody --

3 PROSPECTIVE JUROR: I understand.

4 THE COURT: -- that's just not able to follow. So
5 I'll ask that you return to the jury lounge at this point.

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: And the clerks over there will have
8 further information for you I'm sure. We very much
9 appreciate your time and service. Thank you.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: And if you'd stand down for just a
12 moment, Mr. Ward, we're going to fill for Ms. Cleavenger.
13 And I'm going to ask Ms. Ross to come forward. And good
14 afternoon, Ms. Ross. Thank you for your patience. And I
15 would first start by asking you whether or not you have heard
16 all of my instructions thus far and the questions that I and
17 the attorneys have raised.

18 PROSPECTIVE JUROR: Yes, I've heard everything.

19 THE COURT: Okay. Can you be a fair and impartial
20 juror in this case?

21 PROSPECTIVE JUROR: I think I could be.

22 THE COURT: But --

23 PROSPECTIVE JUROR: You know, I look forward to
24 hearing evidence. I'm kind of -- I think two -- just after
25 two days, it's -- I think it came up with a question about

1 the FBI.

2 THE COURT: Yes.

3 PROSPECTIVE JUROR: And I just wanted to say that
4 while I took everything at face value 20 years ago, I
5 recently actually started to question things that are
6 happening in our government, and I've read a lot about it
7 lately, and I just -- this has just been coming into my mind
8 after listening to everybody, and -- so I wanted to be open
9 about that and say I would really, really love to hear facts
10 and evidence on all these issues.

11 THE COURT: Okay. Well, let's get a little bit
12 more basic before we get into that one area that you just
13 mentioned.

14 PROSPECTIVE JUROR: Okay.

15 THE COURT: You've been hearing the kinds of
16 questions that I've been asking over the course of two days
17 and Ms. Moreno asked for an hour. Hearing all of that,
18 hearing the instructions, being advised of the basic
19 principles in this case, the constitutional principles that
20 apply, can you be fair and impartial?

21 PROSPECTIVE JUROR: Yes, I believe I could be fair.
22 I'm a strict constitutionalist.

23 THE COURT: I'm sorry?

24 PROSPECTIVE JUROR: I would say I'm a strict
25 constitutionalist.

1 THE COURT: A strict constitutionalist. I don't
2 know what that means.

3 PROSPECTIVE JUROR: Kind of. What is it? I guess
4 I've been -- recently my eyes have been opened about the
5 United States Constitution, and I believe strongly in freedom
6 of speech.

7 THE COURT: All right. Is there a particular event
8 that has opened your eyes? You seem to have had an epiphany
9 lately. What is there that's happened that you feel has
10 shifted your thinking for you? Could you talk about it?

11 PROSPECTIVE JUROR: Yeah, I'm trying to gather my
12 thoughts. I think it's been the war. I've -- I guess that
13 could sum it up. If anyone knows the beliefs of Ron Paul,
14 I've been following a lot of his.

15 THE COURT: So you consider yourself to be a
16 Libertarian, and that's reflected on your questionnaire.

17 PROSPECTIVE JUROR: Yes. And I think -- I guess
18 it's just been a change in my attitude from how I felt 20
19 years ago.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: And so I guess I've just
22 been -- I've kind of been concerned with if we're -- you
23 know, I don't believe we're hearing the truth about
24 everything on the mainstream media.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR: So that's -- I guess that has
2 been an epiphany to me perhaps four to eight years ago.

3 THE COURT: All right. Well, all of those things
4 are fine. We've certainly been exposed to an awful lot in
5 the media. We have all types of media espousing on all types
6 of issues. You embrace the beliefs I think, as you phrase
7 them, of Ron Paul. We know that he ran for the Republican
8 nomination this last time around for president of the United
9 States. We know he's a Libertarian. We knows he's against
10 all foreign wars and foreign military activity the government
11 is currently involved with.

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: His position is end them now, bring all
14 the troops home, close down all our military bases all over
15 the world, and basically just get out of the way.

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: All right. That's all well and good.

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: That doesn't disqualify you from being
20 a member of this jury. What I want to know is whether or not
21 you can set aside your political philosophy, your leanings,
22 who you might embrace, whether you feel that our activity in
23 the Middle East and in other places is just or unjust; can
24 you decide this case having heard the charges based on the
25 evidence and not be influenced by these other considerations?

1 If you feel you would be unduly influenced, that it would --
2 it would incline you to favor one side or the other, then
3 this is not a proper case for you.

4 PROSPECTIVE JUROR: No, I don't think I would favor
5 one side over another.

6 THE COURT: Okay. I asked a lot of questions
7 there. You don't think you'd favor one side or the other.
8 Can you fairly consider the evidence, give both sides a fair
9 shake in that regard?

10 PROSPECTIVE JUROR: Yeah, I would look forward to
11 doing that.

12 THE COURT: You feel that you can keep out all of
13 these considerations that we've been -- you've been thinking
14 about politically recently that have come to mind? Can you
15 set those aside? This is not a case about them.

16 PROSPECTIVE JUROR: Yeah, I think I could set them
17 aside. I think it's been the whole process of trying to
18 express who we are in this -- in this venue that it's made me
19 think of all of these positions, you know.

20 THE COURT: Sure.

21 PROSPECTIVE JUROR: But I actually never -- don't
22 really sit and think about it that often.

23 THE COURT: And we spent a good deal of time on the
24 importance of being able to judge the believability of all
25 witnesses who testify by the same standards, that no one

1 should take the stand here with a leg up in the mind of the
2 jury, with the jury thinking this person is more inclined to
3 tell the truth, is inherently more truthful than anyone else
4 because of the job that individual has. The other side of
5 that coin is that no one should feel that if somebody takes
6 the stand, they're less likely to be truthful simply because
7 of their position.

8 You'll be hearing from certain witnesses called by
9 the government who are from governmental agencies,
10 particularly the FBI. Would your recent feelings and
11 thoughts concerning the politics that you've been referring
12 to influence you in your ability when it comes to assessing
13 the believability of witnesses?

14 PROSPECTIVE JUROR: I think not. I don't really
15 know anything about the FBI. I have heard negative things
16 about the CIA, however, but I think that I would, you know,
17 give everybody the right to speak, and then I would have to
18 evaluate based on what I hear and, you know.

19 THE COURT: Would you follow the law in this case?

20 PROSPECTIVE JUROR: Oh, absolutely, yeah. I'm that
21 type of person definitely.

22 THE COURT: Okay. Is there any reason you can
23 think of why you should not be on this jury?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR: No, I can't.

2 THE COURT: Just going through your questionnaire
3 here briefly. Have you worked outside the home? I know
4 you're a homemaker at the present time, you had training in
5 computer science. Have you worked outside the home in the
6 past? I assume so.

7 PROSPECTIVE JUROR: Yeah, before I had children, I
8 worked at IBM as an assistant systems engineer.

9 THE COURT: Okay. Have you supervised other people
10 in the workplace?

11 PROSPECTIVE JUROR: No. Well, only as a homemaker.
12 I was always a coach in rec leagues and things, so I guess --

13 THE COURT: Volleyball?

14 PROSPECTIVE JUROR: Yes, and basketball.

15 THE COURT: Okay. All right. Ms. Moreno, why
16 don't you proceed if you have any particular questions --

17 MS. MORENO: I do.

18 THE COURT: -- for Ms. Ross.

19 MS. MORENO: May it please the Court?

20 THE COURT: Briefly, please.

21 MS. MORENO: Hi. You were asked -- you were asked
22 if there was anything about Islamic teachings or doctrine
23 that was personally offensive to you, and you said "Yes."
24 Then you said "I've heard people say that they want to kill
25 the infidel. I've also heard that this is not true, so I

1 guess there have been many different forms of Islamic
2 teaching."

3 PROSPECTIVE JUROR: Yeah. You know, I think I
4 misread the question because I don't -- I didn't pay
5 attention to the "personally offensive" part.

6 MS. MORENO: Okay.

7 PROSPECTIVE JUROR: So I would say I made a mistake
8 in saying yes because I'm not easily offended really by
9 anything.

10 MS. MORENO: Okay.

11 PROSPECTIVE JUROR: You know, like I really don't
12 know that much about Islam other than just what I've heard
13 and, you know -- I mean I'm 53 years old and I read a lot.
14 I've heard a lot of things.

15 MS. MORENO: You indicated that you were asked if
16 you had personal contact with Muslims, and you didn't say yes
17 or no, but then the next question is if yes, in what context,
18 and you wrote -- you checked in "in school," and then you put
19 "not sure," and then you checked "other," and you said "just
20 out in public, i.e., airports." What did you mean by that?

21 PROSPECTIVE JUROR: You know, I wanted to just be
22 as truthful as possible, and I don't believe I know anyone
23 personally Islamic, but I think I -- I know someone who's
24 Persian, and then I think I assumed they were Islamic and
25 later found out they were Christian.

1 And then as far as school, I rethought that. I had
2 a religious studies teacher, and I believe he was Indian or
3 Pakistani, so I don't know what his religious faith was.

4 MS. MORENO: Okay.

5 PROSPECTIVE JUROR: So I was just trying to think
6 of anything, in vain.

7 MS. MORENO: Well, I appreciate that.

8 PROSPECTIVE JUROR: I do know -- also I know
9 someone who's from Egypt and I don't know their faith. I
10 don't know what it is.

11 MS. MORENO: Okay. You were asked if you followed
12 any criminal cases involving allegations of terrorism or
13 support of terrorism, and you checked "no," and then you
14 wrote, "I have been wondering if we know the whole truth
15 about 9-11." Do you want to expand on that?

16 PROSPECTIVE JUROR: What did I say no to?

17 MS. MORENO: I'm sorry. You were asked if you
18 followed any criminal cases involving allegations of
19 terrorism or support of terrorism; that was the question.

20 PROSPECTIVE JUROR: Oh, I guess it would be yes,
21 right? The answer should have been yes?

22 MS. MORENO: Right.

23 PROSPECTIVE JUROR: I guess I didn't -- I'm not
24 sure what it means to follow a criminal case. I've just been
25 reading a lot of things in the past say four years just

1 because I've gotten -- gotten concerned with the war and --

2 MS. MORENO: So let me ask you this. In answer to
3 his Honor's questions -- I was listening very intently, and
4 you said that -- that you looked -- you looked forward to
5 hearing both sides, and so I need to visit that with you for
6 a little because in a criminal case, it may well be that you
7 don't hear both sides, that you only hear the government's
8 case because they have the burden of proof, okay?

9 PROSPECTIVE JUROR: Uh-huh.

10 MS. MORENO: And the law says that you cannot
11 consider the fact if the defense puts on no evidence, nobody
12 testifies. Do you think you could do that?

13 PROSPECTIVE JUROR: Do what? Consider what?

14 MS. MORENO: Do you think that you could not
15 consider the fact that the defense would not put on any
16 evidence as the law would require you to do. If you can't,
17 you can't.

18 PROSPECTIVE JUROR: No, I could do that, no
19 problem.

20 MS. MORENO: You wouldn't have any problem?

21 PROSPECTIVE JUROR: No. In fact, I didn't realize
22 that the law requires you to do that. I mean my only
23 experience has been on TV shows, you know, Perry Mason, where
24 the person who's guilty always get up and confesses to
25 everything, so --

1 THE COURT: Ms. Moreno, I'm going to ask that you
2 conclude this, and we'll get Mr. Ward back up and --

3 MS. MORENO: Thank you.

4 THE COURT: Mr. Ward, would you please continue
5 with your examination.

6 MR. WARD: Let's see. I'm done with my general
7 questions, and I wanted to do follow-ups with three
8 prospective jurors. Juror number 15, it's Ms. Boggess,
9 right?

10 PROSPECTIVE JUROR: Boggess.

11 MR. WARD: Boggess, right. On your questionnaire
12 there was a response about serving on a -- previously on a
13 jury.

14 PROSPECTIVE JUROR: Yes.

15 MR. WARD: And what I wanted to ask you about that
16 was whether there was anything about that experience,
17 positive or negative, without telling me the result, that you
18 feel might affect your ability to judge this case fairly.

19 PROSPECTIVE JUROR: No, I didn't have any -- it
20 didn't finish, so I didn't have any positive or negative
21 feelings.

22 MR. WARD: Oh, I understand it didn't finish.

23 PROSPECTIVE JUROR: Yeah. So it barely had
24 started, so I didn't have any, you know -- I mean it was a
25 little disappointing that we went through all this and

1 nothing came of it. But I didn't have any positive or
2 negative feeling.

3 MR. WARD: Okay. So if I understand you correctly,
4 you did not deliberate.

5 PROSPECTIVE JUROR: We did not.

6 MR. WARD: Okay. Great. If we could pass the
7 microphone to juror number 24, Ms. Delaney, right?

8 PROSPECTIVE JUROR: Yes.

9 MR. WARD: So, Ms. Delaney, can you just tell us a
10 little bit about what you did at Planned Parenthood and how
11 long you were there.

12 PROSPECTIVE JUROR: I worked for ten years as an
13 assistant manager. And in the very beginning of my
14 employment there, I was a -- they had a different term, but
15 it was a medical assistant, and I progressed to an assistant
16 manager, management position.

17 MR. WARD: Okay. And besides that time, that job
18 at Planned Parenthood, who I understand you're not working
19 right now --

20 PROSPECTIVE JUROR: Right.

21 MR. WARD: How were you employed before you went to
22 Planned Parenthood?

23 PROSPECTIVE JUROR: I worked for a place called
24 Epic Resorts, which was -- it had a travel arm; it was
25 selling and renting rental weeks at resort properties

1 timeshare.

2 MR. WARD: So I noticed on your educational
3 background that you have an MS in clinical psychology?

4 PROSPECTIVE JUROR: Yes.

5 MR. WARD: Do you ever do any graduate or --

6 PROSPECTIVE JUROR: I have a master's degree in
7 clinical psychology.

8 MR. WARD: Sure.

9 PROSPECTIVE JUROR: I came out to California to do
10 a Ph.D program but I did not complete that.

11 MR. WARD: Okay. Then did you go from the Ph.D
12 program into the travel service?

13 PROSPECTIVE JUROR: Yes, crisis of conscience. It
14 was time to shift gears.

15 MR. WARD: And juror number 40, Ms. Fierro.

16 PROSPECTIVE JUROR: Yes.

17 MR. WARD: Ms. Fierro, I apologize. Give me just a
18 minute and I'll get caught up to the question in your
19 questionnaire. Oh, on question -- the question number 51 --
20 this was the question about there may be evidence in the case
21 consisting of tape-recorded telephone conversations using
22 electronic devices, and your response was "I believe it would
23 depend" -- the question was whether or not you can fairly
24 consider that evidence along with the other evidence in the
25 case, and your response is that I believe it would depend

1 upon the evidence presented at trial.

2 I think I know what that means, but can you explain
3 to me a little bit more --

4 PROSPECTIVE JUROR: Well, my belief is not
5 everything that's recorded is legal, so depending on the
6 trial and what's presented to me is whether I'm going to
7 decide whether one way or another.

8 MR. WARD: Okay. Well, if it was presented to you
9 and the Court instructed you that it had been admitted as
10 evidence, could you fairly consider that evidence along with
11 any of the other evidence committed at trial?

12 PROSPECTIVE JUROR: I would consider it as
13 evidence, but then again I would have to sit with the jury to
14 decide whether it was appropriate or not appropriate.

15 MR. WARD: Well, when you say appropriate or not
16 appropriate, would you -- would you -- is there anything in
17 particular about tape-recorded conversations that would give
18 you trouble on fairly judging the case either for the
19 government or the defendants?

20 PROSPECTIVE JUROR: Well, again, if it's done
21 legally and you can prove that it was done legally and it
22 comes forward that it's done legally, I would take it into
23 consideration.

24 MR. WARD: Okay.

25 THE COURT: Mr. Ward, let me step in here, please.

1 It's not the function of the jury to decide whether evidence
2 that comes in in the form of recorded telephone calls is
3 legal evidence. It's evidence. If it's coming in, if it's
4 coming in, it's evidence to be duly considered by the jury.
5 If it were not evidence, as you term it to be, legal
6 evidence, then it would not be coming in.

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: All right. Can you accept that
9 principle? It's not the function of the jury to determine
10 the legality of evidence in the form of wiretap intercepts or
11 recorded conversations; that's the point I want to make with
12 you at this time. And if you have any difficulty accepting
13 that, then we need to know that. But if you can accept that
14 principle and then fairly consider all the evidence in the
15 case, giving what weight to the evidence you find is
16 deserving, then that's basically what the responsibility of
17 the jury is.

18 PROSPECTIVE JUROR: Yes, I believe I can do that.

19 THE COURT: Okay.

20 MR. WARD: Your Honor, I have nothing further.

21 THE COURT: Okay. All right. Ladies and
22 gentlemen, we are going to take a break at this point. It's
23 three o'clock, and I and the attorneys are going to spend
24 some time discussing a few matters properly discussed outside
25 your presence, so we're going to take a bit of an extended

1 recess at this time, and we're going to take it -- well, it's
2 three o'clock now -- we're going to take it to at least 3:30
3 for your purposes, and we'll see you back here at 3:30.
4 Hopefully we can get you in at that time or as soon
5 thereafter as possible. Remember the admonition, and we will
6 see you shortly. Thank you.

7 (The jury left the courtroom.).

8 THE COURT: Okay. All right. We are outside the
9 presence of all jurors. Any challenges for cause, Mr. Ward
10 or Mr. Cole?

11 MR. WARD: None from the government, your Honor.

12 THE COURT: Any challenges for cause from the
13 defense?

14 MS. MORENO: Yes, yes, your Honor.

15 THE COURT: All right, Ms. Moreno. Please.

16 MS. MORENO: Your Honor, I believe with respect to
17 juror number 2, Ms. Farkas, she never gave an unequivocal
18 committal to being fair -- I'm trying to see my notes -- so
19 she talked -- I mean, you know, your Honor --

20 THE COURT: Her testimony is fresh in my mind, Ms.
21 Moreno, so -- but make any record you'd like to make.

22 MS. MORENO: All right. So I think she wasn't
23 being candid, your Honor, and I think what she said in her
24 questionnaire was a candid response and that was that, as she
25 talked about -- I don't have the questionnaire --

1 THE COURT: Well, I went in to this -- you're
2 looking at 18 -- 17 and 18. She thinks most are good people,
3 that they don't feel women are equal to men; 18 is that --
4 that was 17; 18, that they can be taught at an early age to
5 hate and that anyone who doesn't agree with their doctrine is
6 an infidel.

7 I spent quite a bit of time with her at least
8 getting her to elaborate a little bit, and I think it was
9 pretty clear after the time I spent with her that she wasn't
10 referring to Muslims in general, that she was referring to
11 those elements that preach hate, whether in a madrassa,
12 whether they're proponents of Wahhabism, which she may or may
13 not have heard of, but she agreed I think in general terms
14 that that's what she had reference to. She indicated she had
15 substantial contact with Muslims in different -- in different
16 circumstances. And then I know you spent quite a bit of time
17 with her and I know what you were anticipating you'd get from
18 her, but I don't think you ever got it. I think she did make
19 a commitment, and she made a commitment in one of two ways in
20 my view looking at how she was expressing herself, her body
21 language and all the rest of it. She said that she hoped
22 that if she were in the shoes of -- in essence what she was
23 saying is that if she were in the shoes of one of the
24 defendants here, she would be judged by the same frame of
25 mind she has. And then just as important was the fact that

1 frankly I think she became a little antagonistic at the end;
2 she took umbrage with you.

3 MS. MORENO: Yes, she did.

4 THE COURT: And I think they took umbrage at your
5 suggestion that she could not be fair, that this was not a
6 firm commitment she was making. So I would deny your request
7 to excuse Ms. Farkas for cause.

8 MS. MORENO: I would also just proffer for the
9 record her answer to question number 27, that it would make
10 it difficult for her to listen with an open mind and render a
11 verdict in this case, in this case. And I believe she was
12 not being candid with the Court. I agree with your Honor's
13 perception that she got antagonistic, and so I would -- I
14 would submit the cause challenge on her.

15 THE COURT: I think you're going to have to use one
16 of your many peremptory challenges directed in her direction
17 then, Ms. Moreno.

18 MR. DRATEL: Your Honor, may I have just one second
19 about -- and I agree that she did take on her, but I thought
20 it was because she was being asked to make a commitment, and
21 it never got -- she never said yes, I can make an unequivocal
22 commitment; she said well, I hope I can or I hope someone, if
23 it were doing it for me, could do that, not that she was
24 saying that she would be the right juror for this case. I
25 think her resistance and her coming back with an answer that

1 said "if you know me better than I do" is not the same as
2 saying yes, I can unequivocally do it. She never got there.

3 THE COURT: Okay. Any further challenges, Ms.
4 Moreno?

5 MS. MORENO: Your Honor, with respect to Ms. Ross,
6 one of the last jurors --

7 THE COURT: Yes.

8 MS. MORENO: -- I wanted to inquire into her
9 answers on question 17; I did not have the ability to do so.
10 And this was where she answered the question about her view
11 of the Islamic faith, that she indicated -- first she said
12 that all people are free to worship the God of their choice,
13 then she said that my faith does teach that they do not
14 follow the one true God that I believe in. This saddens me.
15 I believe that was an area that cause could have been
16 developed.

17 THE COURT: Well, okay. As I say, she answered my
18 questions. We went into the business that we've gone in with
19 so many of the jurors generally and individually about
20 credibility, and time does become a bit of a constraint here.
21 I think she satisfied me that she would be fair and
22 impartial. And if you're challenging her for cause, I'm
23 going to deny the request to remove her for cause.

24 MS. MORENO: Would the Court allow me to develop
25 the cause challenge on her?

1 THE COURT: I think you did. I mean I think you
2 questioned her, and I -- you know, we're at the point now
3 where we've got to get our -- select our jurors in this case.
4 Ms. Ross is a bit of a loose cannon on the deck; I'll give
5 you that. And it may be that if both sides want to stipulate
6 to remove her for cause, I'm happy to do that, but that --
7 what that's going to do is diminish slightly our chances of
8 getting three alternates, and it's going to reduce the number
9 of challenges, peremptory challenges, back to 7 and 12. I'm
10 happy -- I'm happy to have both sides stipulate for her
11 removal, but it may have -- it may have some consequences
12 here. I'll try to impanel three juror -- three alternates,
13 but it may not be possible.

14 MR. COLE: We're fine stipulating to removing her
15 for cause.

16 THE COURT: Okay. I assume that's agreeable, Ms.
17 Moreno.

18 MR. DURKIN: She's all right with me, Judge.

19 MS. MORENO: He doesn't want to stipulate, so we're
20 not --

21 MR. DURKIN: I like her. I mean I don't disagree
22 that she's a loose cannon on the deck of life, but --

23 THE COURT: You like loose cannons.

24 MR. DURKIN: I do. Been called one a few times.

25 THE COURT: I'm sorry?

1 MR. DURKIN: I said I've been called one a few
2 times.

3 THE COURT: Okay.

4 MS. MORENO: Okay.

5 THE COURT: All right. Well, you know what? I
6 don't think you need to worry about it.

7 MS. MORENO: Exactly.

8 THE COURT: In any event, any other challenges for
9 cause, Ms. Moreno?

10 MS. MORENO: No, your Honor. How long can we --

11 THE COURT: Let's do this. Let's do this. Well,
12 it shouldn't take a while. It's a deselection process. You
13 know who you need to get off. I don't want to prolong this
14 too long. I know that we're working under a little pressure
15 because I do want to give Ms. Fontier an opportunity to get
16 her rulings on deposition transcripts.

17 MS. FONTIER: I would rather take as much time as
18 Ms. Moreno needs.

19 THE COURT: Okay. Let's do this --

20 MS. FONTIER: We can deal with the depositions
21 another time.

22 THE COURT: It's time for a break. Let's take ten
23 minutes, okay? That's going to get us back here at 20 after
24 3:00. Let's get you that time -- if you don't want to take
25 all that time -- plus another 20 minutes. You got a half

1 hour to work on your strikes. Each side is going to get a
2 strike sheet at this point. Identify your strikes. At this
3 point it's 8 and 13, okay, if you wish to, exercise that many
4 peremptory challenges. I'd like to get the jury back in here
5 about a quarter to 4:00. As soon as you're done with your
6 strikes, please let Gaby know. I'll come down, we'll
7 correlate your strikes. If there are any constitutional
8 questions we'll go over those, and then we'll bring the
9 entire panel back in, seat them in the back, and then call
10 the first 12 unchallenged jurors as the jurors to be seated,
11 and then two -- at least two, hopefully three alternates, and
12 then we'll call it at that point. And then we'll swear them
13 tomorrow, and hopefully we'll have some time for Ms. Fontier.
14 Okay? Good.

15 MS. FONTIER: Thank you, your Honor.

16 (There was a break in the proceedings.)

17 THE COURT: Do we have all counsel here? Ms.
18 Moreno?

19 MS. MORENO: Yes.

20 THE COURT: Pursuant to your request, we have
21 arranged to have audio transmitted from Courtroom 16 into
22 Courtroom 15; I'm happy to report that.

23 MS. MORENO: Thank you so much.

24 THE COURT: And there will be 38 additional seats.

25 MS. MORENO: Great.

1 THE COURT: Members of the community, the Somali
2 community, are welcome to be seated behind the bar in
3 Courtroom 15 on a first come/first served basis. It would be
4 nice if people would cooperate if there are more and they
5 could rotate in and out. Of course, that would be in
6 addition to seating, available seating, in Courtroom 16.
7 There will be security in there. I will certainly appreciate
8 any efforts that all of you can undertake to help maintain
9 order and decorum in the halls always and to have distance,
10 respectable distance, between the jurors in the case and
11 supporters, as you have termed them yourself in the past. So
12 that would be very helpful. And I think that's -- that's
13 some news I wanted to give you.

14 MS. MORENO: We're very grateful, your Honor.

15 THE COURT: Sure.

16 MS. MORENO: We're emailing one of the
17 leaders/liaison to the community right now. And I'm sure
18 that they're going to be very, very grateful. And I'll try
19 to personally speak to them, someone, sometime tonight.

20 THE COURT: All right. Okay. Very good. Okay.
21 We're outside the presence of jurors. Looking at this strike
22 sheets here. Okay. The first -- you have your copies as
23 well I'm sure, counsel, so we can get started here.

24 The first 12 unchallenged jurors will comprise the
25 jury here. Mr. Bilse is unchallenged; he will be juror

1 number 1. Farkas is challenged by the defense. The third
2 juror, Mr. Wease, has been challenged by the defense. The
3 fourth juror, Ms. Lee, has been challenged by the government.
4 The fifth juror, Mr. Rodriguez, has been challenged by the
5 defense. The sixth juror, Mr. Channell, is unchallenged and
6 shall be juror number 2. Please follow along with me,
7 counsel, because if I'm inaccurate here in any way, you can
8 let me know.

9 The seventh juror, Ms. Faith, is unchallenged by
10 either party; she will be juror number 3. The eighth juror,
11 Ms. Flores, is challenged by the defense. Ninth juror,
12 Mr. Sciacqua, is unchallenged, and he will be juror number 4.

13 The tenth juror is unchallenged, that is, Mr.
14 Johnson; he'll be juror number 5. The 11th juror is
15 unchallenged and will be -- that's Ms. Meza -- juror number
16 6. Ms. Lopez is unchallenged by either side; she'll be juror
17 number 7.

18 You know, counsel, nobody mentioned it, but let me
19 ask at this point. Are there any constitutional challenges
20 to the strikes in this case by either side?

21 MR. COLE: Not by the government, your Honor.

22 THE COURT: All right.

23 MS. MORENO: Not for the defense, your Honor.

24 THE COURT: All right. Continuing on, number 13,
25 Ms. Smith, has been challenged by the defense. Juror number

1 14, Ms. Salinas, has been challenged by the government.

2 Juror number 15, Ms. Boggess, is unchallenged; she will be
3 juror number 8.

4 Juror 16, Mr. Breier, challenged by the defense.

5 Juror number 17, Mr. Buckner, challenged by the defense.

6 Juror number 18, Ms. Murguia, challenged by the defense.

7 Juror number 19, Ms. Free, challenged by the government.

8 Juror number 20, Mr. Bristow, challenged by the government.

9 Juror number 21, Ms. Ross, challenged by the government and
10 the government only.

11 Juror number 22, Ms. Freni, is unchallenged; she
12 will be juror number 9. Juror number 23 challenged by the
13 defense. Juror number 24 -- 23 is Mr. Todd. Juror number
14 24, Ms. Delaney, challenged -- unchallenged; juror number 10
15 she will become. Juror number 25, Miriam Hernandez,
16 challenged by the defense. Juror number 26, Ms. Ramirez,
17 unchallenged; she will be the 11th juror. Juror number 27,
18 Ms. Fierro, unchallenged by either side; she'll be juror
19 number 12. That is your jury.

20 And then juror 28, Ms. Stahl, challenged by the
21 defense. Juror number 29, Mr. Crowell, challenged by the
22 defense. Juror number 30, Mr. Brenzel, unchallenged; he will
23 be alternate number 1.

24 Juror number 31, Ms. Dominguez, challenged by the
25 government. Juror number 32, Mr. Merkin, challenged by the

1 government. Juror number 33, Ms. Evans -- excuse me --
2 Mr. Evans, challenged by the defense. Juror number 34,
3 Ms. Alise, challenged by the government. Juror number 35,
4 Mr. Adams, unchallenged; he will be alternate number 2.
5 Juror 36, Ms. Clark, unchallenged; alternate number 3.

6 So those are our jurors and our alternates. Are we
7 in agreement, counsel, that it's a correct recitation of
8 names?

9 MS. MORENO: Yes, your Honor.

10 MR. COLE: Yes, your Honor.

11 THE COURT: Okay. Very good. What I would like to
12 do at this point is to bring everyone in, have them seated in
13 the back of the courtroom, and we will -- I will call the
14 jurors to be seated in the box. And we'll put one extra seat
15 up against the wall there, Gaby, near the jury deliberation
16 room for the alternate juror once we're calling them and
17 having them come forward, okay. Then I'll just -- I'll
18 advise the individuals that they are the jurors selected for
19 the case as well as the alternates. I'll give them -- I'll
20 have them report back here at nine o'clock tomorrow for
21 opening statements, give them a few further admonitions, and
22 then that will be it; I'll let them go and have them report
23 directly to Courtroom 16 tomorrow morning at 9 a.m. for
24 preliminary instructions and opening statements. Anything
25 further before we bring we bring these folks back in? Mr.

1 Cole?

2 MR. COLE: No. Thank you, your Honor.

3 THE COURT: Okay. Anyone from the defense?

4 Ms. Moreno?

5 MS. MORENO: Thank you. No, your Honor.

6 THE COURT: Okay. Very good.

7 (The prospective jurors entered the courtroom.)

8 THE COURT: All right. First of all, ladies and
9 gentlemen, thank you for your patience. I'm just trying to
10 get a few loose ends tied up here. For those of you who left
11 personal items in the jury box -- and I think there are just
12 a few of you -- could you come forward, please, and secure
13 the personal items and then -- and then return to your seats.
14 I should have asked you to do that earlier. Sorry about
15 that.

16 All right. Ladies and gentlemen, let me tell you
17 what we've been doing the last 45 minutes or so. Each side
18 is privileged to exercise a certain number of peremptory
19 challenges. I know that those of you with prior jury service
20 in all probability recall what that process is about. We
21 thought that would be better done outside your presence, and
22 so counsel were able to once again review all of the
23 information they've elicited in the form of the
24 questionnaires, your answers to interrogatories, your
25 backgrounds, and all the rest of it, and we've basically made

1 the decisions as to who will sit as jurors in this case.

2 If you do not sit as a juror, if you are not
3 impaneled in this case, please do not take that personally;
4 please do not feel rejected in any way, shape, or form. The
5 attorneys in their wisdom and based on a limited amount of
6 information made considered decisions as to who is
7 appropriate to sit on the case. So that's pretty much it.
8 Don't speculate or exercise conjecture as to why and
9 wherefore most of you will not be sitting on the case because
10 we only select 12 jurors and three alternates, and so I'm
11 going to ask those individuals who will comprise the jury to
12 come forward as I call names, and there will be three
13 alternate jurors as well. I will tell you that alternates
14 are very important. This case is expected to go something on
15 the order of three weeks -- and you all know that, you've all
16 been time-screened -- and we're coming through a pretty
17 difficult season with the flu and other illness it seems, and
18 so we always appreciate having alternate jurors. And of
19 course alternates are here for all sessions of court, and
20 I'll have more to say about that. But in any event, 15 names
21 are going to be called at this time out of approximately 50
22 of you, and so these are the names. I'll ask you to come
23 forward and take the seats that will be assigned to you.

24 Mr. Bilse, if you come forward, please, juror
25 number 1, and once again take the first seat, the one that

1 you had occupied the entire day. Thank you. Juror number 2,
2 Mr. Channell, please come forward. Juror number 3, Ms.
3 Faith. Juror number 4, Mr. Sciacqua. Juror number 5, Mr.
4 Johnson. Juror number 6, Ms. Meza. Juror number 7,
5 Ms. Lopez. Ms. Lopez, if you'd take the first seat here in
6 the front row.

7 Juror number 8, Ms. Boggess, please come forward.
8 Juror number 9, Ms. Freni. Juror number 10, Ms. Delaney.
9 Juror number 11, Mr. Ramirez -- I'm sorry. Did I do it
10 again? I did it again. Ms. Ramirez, if you'd come forward
11 please, with apologies. Juror number 12, Ms. Fierro.

12 Okay. Our first alternate juror, Mr. Brenzel, if
13 you'd come forward, please, and take the vacant seat in the
14 top row there. Alternate number 2, Mr. Adams. Alternate
15 number 3, Ms. Clark. Ms. Clark, if you'd like, you can come
16 around and sit in this seat right here next to Mr. Bilse in
17 that little stand for the moment.

18 All right. To the remaining members of the panel,
19 I want to thank you sincerely for your time, your patience,
20 your patience with us, with the questionnaire, with your
21 promptness, your willingness to serve on this case; it is
22 truly appreciated. And on behalf of all of the U.S. District
23 judges here in the Southern District of California, I thank
24 you; I thank you for your time, your service, and your
25 commitment.

1 It's interesting. Having gone through the
2 questionnaires, there were several of you with prior jury
3 experience, perhaps not as many as I typically see on a jury
4 panel, and I was thinking as I was going over the
5 questionnaires that it is my sincere hope that before your
6 tour of duty is up, this time here with us, that each and
7 every one of you will have the opportunity, the privilege, to
8 sit on a jury. I think you will find it educational,
9 rewarding, and ultimately unforgettable. And so I leave you
10 with those thoughts.

11 I ask that you -- actually it's not -- well, we may
12 have an update on some -- okay. I was going to say that you
13 were going to remain on call, but I've been asked to ask you
14 to call after 6 p.m. for further instruction. We do have
15 trials going out this week, next week, and thereafter, so
16 you'll be given further information as to whether you're on
17 call or to otherwise report. It is not necessary for you to
18 return to the jury lounge at this time. So, again, thank
19 you, and perhaps I'll see you on another case at some point.

20 (The excused panel members left the courtroom.)

21 THE COURT: Okay. We're in the presence of our
22 jurors. Congratulations to each and every one of you. We
23 look forward to working with you. If somebody could pull
24 that door closed in the back of the courtroom. Thank you.
25 I'm not going to swear you as the jury in this case right

1 now; I'm going to leave that for tomorrow morning. But let
2 me give you some advice and some information. If we were in
3 my courtroom right now, I'd ask you to bend down -- reach
4 down under your seats for your notebooks, and I'd have some
5 instructions for you that you could easily write down. I
6 don't think we have notebooks here, do we, Gaby?

7 THE CLERK: No.

8 THE COURT: Okay. But in any event, let me talk
9 about a few housekeeping matters that I know you're very
10 interested in. First of all, we're going to start at 9 a.m.
11 tomorrow morning, and we're going to conduct this trial in
12 the courtroom I occupy, which is Courtroom 16. Remember, you
13 assembled in Courtroom 15 on the fifth floor today? Well,
14 Courtroom 16 is one courtroom down at the end of the hall,
15 and that will be our courtroom for the duration of this
16 trial. So really all you need to remember, first off, is
17 Courtroom 16, fifth floor, tomorrow at 9 a.m. I urge you to
18 be here early, and we will begin just as promptly as we are
19 able to.

20 I understand that there may be a substantial number
21 of supporters from the Somali community here on behalf of
22 each of these gentlemen who are the defendants in this case.
23 That is perfectly appropriate, and we welcome them. As a
24 matter of fact, we are going to endeavor to create an audio
25 feed for the audio in our courtroom during the trial that can

1 be fed into the courtroom right next door, Courtroom 15,
2 which is where you were this morning, that is currently not
3 occupied, and so we're hoping that we'll be able to serve
4 some members of the community in that sense who won't be able
5 to find room in our courtroom. Our courtroom is much smaller
6 than this -- you're going to see that tomorrow -- a limited
7 number of seats, about 36, 38 -- 36 seats in the back of the
8 courtroom for the public and spectators and that kind of
9 thing. So there will be a lot of people here milling around
10 and that's fine.

11 Remember that you will be jurors on this case.
12 Always try to insulate yourself from any conversation you may
13 overhear about this case, be it coming from spectators or
14 anyone else associated with the trial. Always find a nice
15 quiet place for you to take recesses and more or less be out
16 of the way.

17 When you report at let's say 8:45, at least for
18 tomorrow until you get your bearings and we can get you
19 situated and find a rhythm in the case, as I say, you'll be
20 brought in just as soon as possible and we'll get going.
21 I'll have some preliminary instructions for you. The first
22 thing I'll do is swear you, and I'll have some preliminary
23 instructions for you, and then you will hear the opening
24 statements from attorneys. The government proceeds first in
25 every phase of the case; because of the burden of proof, they

1 have the privilege of proceeding partly because of the
2 tradition of the sequence of events. Keep in mind the
3 defense is under no obligation to make an opening statement;
4 they may decline making an opening statement or defer the
5 making of an opening statement to a later point in time.
6 Then after the opening statements that are to be given, we
7 will proceed with the evidence in the case.

8 Our trial hours -- and you'll get all of this again
9 tomorrow and you can write some of this down; if you can
10 write it down now, that's fine. Our trial hours are from
11 Monday through -- this going to vary a little bit -- Monday
12 through Friday, trial days Monday through Friday, 9:00 to
13 12:00 and 1:30 to 4:30. That being said, the first and third
14 Fridays of this month -- this coming Friday, February 1st,
15 and then February 15 -- we will not be in trial. These are
16 calendar days that I have for other cases; I'll be hearing
17 many other matters in the courtroom, so the courtroom just
18 isn't available for trial. So we will not be in session this
19 coming Friday, the 1st, and two weeks after that, Friday, the
20 15th. I know, Mr. Bilse. I'll get with you in just a
21 moment. And then we have a holiday, Presidents Day, which is
22 the --

23 THE CLERK: It's the 18th.

24 THE COURT: Monday, the 18th, so we'll be -- we
25 won't be in session on that day as well. So there you have

1 three days off. So that takes care of pretty much the time,
2 9:00 to 12:00, 1:30 to 4:30, a midmorning recess of 15
3 minutes, a midafternoon recess of 15 minutes, and your noon
4 recess is from 12:00 to 1:30. That may seem a little bit
5 extravagant, but I want to tell you that the attorneys and I
6 appreciate that kind of time during the middle of the day.
7 There are a lot of moving parts to a trial like this; it's
8 more or less the tip of the iceberg that you're seeing, but
9 it takes coordination for a lot of people, and that kind of
10 time during the middle of the day is very helpful. If we
11 need to go beyond 4:30 a bit to finish up a witness or to
12 accommodate a convenient break in the testimony, we'll do
13 that. But typically those will be the hours that we'll keep.

14 If an emergency arises, we always want you to call
15 us and to let us know whatever that situation might be,
16 illness which is going to prevent you from coming in or some,
17 other emergent circumstance. You can always leave a message
18 with Gaby at her extension, which is area code 619 -- are you
19 going to give them cards? Okay. Have they been handed out?
20 Why don't we hand those cards out. If anything comes up,
21 don't hesitate to give us a call, please, and then we'll act
22 upon it as soon as we can. Okay.

23 Always wear those badges when you're in and about
24 the courthouse. They readily identify you as jurors, and
25 they help insulate you from any conversation you should not

1 be privy to. If you're a block from the courthouse in the
2 morning and realize that you've forgotten your badge, don't
3 go back and get it; we've got extras, so keep on coming.

4 Parking. We're going to get a parking validation
5 machine here, at least the first couple of days. I don't
6 think we're going have it for the duration of the trial, but
7 at least for the first couple of days while you're getting
8 situated and all of that, we'll have -- we'll be able to
9 validate parking for you right in the courtroom, Courtroom
10 16. Mr. Bilse, you had a scheduling matter you wanted to
11 discuss?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: I have a presentation I have to
15 do at a luncheon next Thursday, and my boss was going to sub
16 it. He cannot do that, so it's probably a couple of hours
17 next Thursday at lunchtime.

18 THE COURT: Well, can he sub for you?

19 PROSPECTIVE JUROR: He can't.

20 THE COURT: Oh, he cannot do that.

21 PROSPECTIVE JUROR: He cannot. I have to make
22 that. And there's about 60 people that are paying to come
23 and listen to me, so it's kind of hard to get out of that.

24 THE COURT: And this is going to be this coming
25 Thursday or a week from Thursday.

1 PROSPECTIVE JUROR: A week from Thursday.

2 THE COURT: From 12:00 to 2:00 did you say?

3 PROSPECTIVE JUROR: It's in Mission Hills and it's
4 a lunch, so it's from 12:00 to 1:00, but, you know, traveling
5 there and back, I'm not sure how long that would take from
6 here.

7 THE COURT: Okay. Well, we'll work around that.
8 We'll -- if we need to stop a little bit early to get you
9 there -- do you need to be there at 12:00 on the spot?

10 PROSPECTIVE JUROR: I don't have to set it up, so
11 I'll try to make it as minimal as possible.

12 THE COURT: Okay. And then get back here just as
13 quickly as you can?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Well, any of you have any
16 questions before we let you go for this evening and ask that
17 you return tomorrow morning? I'll have more to tell you
18 about tomorrow morning, but -- you've been taking in an awful
19 lot the last couple of days, and I think we've hit the
20 saturation point. Remember the admonition; it's so very
21 important. You may not discuss this case amongst yourselves
22 or with anyone else or allow yourselves to form or express
23 any opinions until the case has been submitted to you.

24 It's also very important that you remember you're
25 not to conduct any independent investigation or inquiry into

1 the facts or the law, into any of the participants in this
2 case, into any subject matter that has anything to do with
3 this trial. So as I said before -- yes, Mr. Johnson?

4 PROSPECTIVE JUROR: Sorry, sir. Quick question.

5 THE COURT: Yes, sir.

6 PROSPECTIVE JUROR: You say we're not supposed to
7 discuss anything, but you mentioned notepads, materials. So
8 will we be leaving the materials that we take, any type of
9 notes or anything here?

10 THE COURT: Yes, yes. You'll be given notebooks.
11 You'll be -- you'll be expected to take notes. You're not
12 required to take notes, but you're expected to take notes,
13 and I'll have more to say about the notetaking process
14 tomorrow. You'll be leaving your notebooks here in the
15 courtroom -- not in this courtroom but in Courtroom 16 --
16 each night. They'll be secure; don't have to worry about
17 that. You don't take them home with you. And you take notes
18 by -- not electronically but the old-fashioned way, writing
19 in your notebooks. Does that answer your question?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Okay. Very good. So where was I?

22 THE REPORTER: Don't discuss anything.

23 THE COURT: Oh, yeah, independent investigation or
24 inquiries. I think I covered that. Like I said, you know,
25 anything that you may see in a newspaper or article or on TV

1 or the Internet having anything to do with the this case
2 conceivably, or any subject connected with the case, just
3 don't expose yourself to it. All right.

4 Thank you for your time, your patience. We look
5 forward to working with you on this case. We'll see you
6 tomorrow morning at 8:45, Courtroom 15, then you'll be
7 brought over one courtroom. We'll see you then. Courtroom
8 16? Okay. Why don't you assemble outside Courtroom 16 or in
9 some other area. It may be that we'll have people in
10 Courtroom 15 tomorrow. So just assemble outside the
11 courtroom before nine o'clock or in some other location close
12 to our courtroom. We'll get you in as soon as we can and get
13 started. Okay. Have a very good evening. We'll see you
14 tomorrow morning.

15 (The prospective jury left the courtroom.)

16 THE COURT: Okay. We are outside the presence of
17 all jurors. Counsel, are you ready to proceed with
18 deposition rulings?

19 MS. FONTIER: If I may just collect the notebook
20 again.

21 THE COURT: This will be a little bit of a tedious
22 process. Do you wish to have your clients here? They're
23 perfectly -- it's perfectly acceptable to have them.

24 MS. FONTIER: Mr. Moalin would like to stay, your
25 Honor.

1 THE COURT: Everyone staying?

2 MR. GHAPPOUR: Yes, your Honor.

3 MS. MORENO: Yes, your Honor.

4 THE COURT: I had to go back and forth a little
5 bit. I was working with different pleadings and not -- and I
6 think the defense objections were not set forth in a -- in a
7 separate pleading or paper. I think the -- when we reached
8 out to see if one was forthcoming, I think we were advised --
9 I was advised that the objections are right in the
10 transcripts themselves and wouldn't be the subject of a
11 separate pleading. The government did set forth a separate
12 filed -- a pleading entitled United States Objections to
13 Defense Depositions and Response to Defense Objections. And
14 then there was a joint statement of responses and bases for
15 objections in testimony -- in deposition testimony filed by
16 the defense. So I was going back -- I was actually juggling
17 three different sources of objections or responses to
18 objections, looking at these two filings and then looking at
19 the deposition transcripts. So work with me on this. If I
20 miss something, let me know. I think -- I think I'll be
21 pretty thorough here, but don't hesitate to let me know if
22 I've overlooked something. Okay.

23 I'm dealing with tape 1 now. There was a -- I saw
24 somewhere that there was an objection by the government to
25 lines 9 through 14 on page 10.

1 MR. COLE: I think that their page numbering was
2 off on that particular one because page 10 --

3 THE COURT: I didn't see it.

4 MR. COLE: Our first objection is on page 11.

5 THE COURT: Yeah, I didn't see anything highlighted
6 on page 10, but somewhere I picked up there was an objection
7 from the government to lines 9 through 14. So if there's no
8 objection, then there will be no ruling on page 10. Page 11.

9 MS. FONTIER: So just to be clear then when -- the
10 government's just saying that they're withdrawing their
11 objections that they made then, yes? I mean it doesn't
12 matter. It's -- there is an objection right now to --

13 THE COURT: I don't know where I got that. I'd
14 rather not go through all the individual filings, but --

15 MS. FONTIER: Okay, your Honor. Page 11.

16 THE COURT: The diagram was on page 10 that there
17 was an objection to lines 9 through 14. If there was an
18 objection, it's withdrawn. Page 11, the government is
19 objecting to lines 5 through 11. That objection is
20 sustained. The deponent is not being asked what was said,
21 only whether Mr. Moalin's comments were critical. It calls
22 for speculation, lacks foundation as to what is critical. It
23 may be hearsay, but it's sustained on those other grounds.

24 With respect to the government's objection at lines
25 20 to 23, same ruling.

1 The next objection from the government, that comes
2 at page 21, line 15 to page 23, line 20. The objection is
3 sustained on the basis of -- as hearsay.

4 MS. FONTIER: Sorry, your Honor. How far did we
5 go?

6 THE COURT: Page 21-15 through 23-20.

7 MS. FONTIER: That entire two pages?

8 THE COURT: Yes.

9 MS. FONTIER: Okay.

10 MR. COLE: Your Honor, let me note on that one, in
11 fairness we appreciate the ruling. We are going to play some
12 part of that call, and so as I sit here right now, I don't
13 have the portion, and so I just want to note that for the
14 Court in case this, you know, at that point the defense is
15 going to --

16 THE COURT: Well, I may open up the door then --

17 MR. COLE: Right.

18 THE COURT: -- Into everything coming in, but as
19 of this point --

20 MR. COLE: Yes.

21 THE COURT: -- the objection would be sustained. I
22 have a further note on this, that it's sustained on grounds
23 asserted by the government; it also -- that was hearsay -- it
24 also lacks foundation as to the conclusion the U.S.
25 government was overflying Mogadishu.

1 MS. FONTIER: So, your Honor, for purposes of
2 editing these tapes when things such as this which are
3 hearsay because the call isn't yet in evidence, I don't know
4 how to deal with that as far as the tape. I mean we can
5 leave it in I guess and then at some point skip -- I'm not
6 entirely sure how to do it, so tell me how we're going to do
7 this.

8 THE COURT: Well, I think you really need to
9 consider spending some quality time together so you can
10 really work on this. Everything has been telescoped down.
11 This is not a statement that's critical of anyone here, but
12 that's just what is happened. And so I know you've been
13 under a lot of pressure, both sides have been under a lot of
14 pressure, and things were getting to one another late for
15 reasons that are already a matter of record and obviously
16 getting to me late. But we're at the point now where the
17 rubber meets the road, and this jury is coming in to begin
18 the evidence tomorrow. So I know you've got many attorneys
19 here, and you're going to have to create a division of labor
20 where perhaps one or a couple of you are going to have to sit
21 down with one of the attorneys from the government and really
22 work this out. Burn the midnight oil, do whatever you need
23 to do. I can't advise you as to what the best approach --

24 MS. FONTIER: Okay.

25 THE COURT: -- would be, but you're going to need

1 to do something that's going to bring about as seamless a
2 presentation of the testimony as possible --

3 MS. FONTIER: Yes, your Honor.

4 THE COURT: -- once you've got these rulings.
5 So --

6 MS. FONTIER: Your Honor, was there some portion
7 from pages 21 through 23 that regardless of if the tape is
8 played it will still not be admissible because your Honor had
9 mentioned some other cases. Or if this -- if the tape is
10 played, this is admissible.

11 THE COURT: Well, all I can do is rule upon the
12 objections and the grounds asserted for the objections.

13 MS. FONTIER: Okay.

14 THE COURT: In this one particular instance, I --
15 with a hope it would be of assistance to the parties -- even
16 went beyond the hearsay objection, letting you know that this
17 testimony was without foundation and there was a conclusion
18 insofar as there was speculation about the U.S. government
19 overflying Mogadishu. So I'm trying to be helpful. If you
20 all agree that some of this is coming in, then you're doing
21 so in light of the objection having been sustained. I hope
22 we don't get bogged down --

23 MR. COLE: No, no. I don't plan on -- your Honor,
24 I -- we like the Court's ruling. I just -- since they took
25 the deposition -- it's only going to come up maybe once or

1 twice because I think they took the calls only once or twice
2 during the whole deposition. But since they took them
3 before, you know, this case happened -- their case happened
4 out of order, so to speak. It may be confusing once or
5 twice. But we'll talk to defense counsel.

6 THE COURT: Okay. Okay. So I think that was it
7 for tape 1. I'm just making sure that I don't see any
8 defense objections here.

9 MS. FONTIER: No, your Honor.

10 THE COURT: Still on -- okay. We're on tape 2.
11 Going through tape 2, the first objection is page 13. This
12 is a defense objection. It's highlighted in green. It is
13 overruled. If that's still an objection, its overruled. I
14 had -- I had the impression that some of these objections
15 would be withdrawn in light of other testimony coming in that
16 was unobjected to. I don't know if you've gone back and
17 looked at that through the same lens --

18 MS. FONTIER: Your Honor, as to that particular
19 objection I don't know why it wasn't withdrawn. It may have
20 just have been somewhere in the confusion of trying to
21 color-code these properly, and I don't think that was an
22 objection that we needed you to sustain.

23 THE COURT: All right. Well, I'll go through --
24 I've made the rulings, I'll give you what those rulings are,
25 and then hopefully that will be helpful for you in putting

1 together your tapes. So that one was overruled if it wasn't
2 withdrawn.

3 The next objection I have is from the defense.
4 It's page 16, line 25 through page 17, line 2. That
5 objection is overruled, but I also note -- it's overruled on
6 the ground asserted, but I also note that it's unintelligible
7 in part. I just didn't really understand what was being
8 communicated there. But in any event, that objection is
9 overruled.

10 I think next, page 21, a defense objection. This
11 objection is sustained. It is to the testimony set forth at
12 page 21, line 21 through 26. Lack of foundation.

13 I was a little unclear -- the next is page 22, tape
14 3 -- tape 2, excuse me. Lines -- I see green marking lines
15 21 through 27. I was a little unclear as to whether this
16 was -- I have a question mark by it. Was this even -- was
17 this being pursued, Ms. Fontier?

18 MS. FONTIER: Let me ask Mr. Dratel what the source
19 of this objection was.

20 THE COURT: It just didn't -- it goes -- it goes
21 over to the first two lines of page 23, but it just doesn't
22 seem to add anything. It's the kind of thing that could be
23 eliminated I think.

24 MS. FONTIER: There's certainly colloquy that needs
25 to be eliminated, but I don't know if there was an objection

1 that --

2 MR. DRATEL: That's withdrawn, your Honor.

3 THE COURT: Okay. Next, I have on page 25, still
4 on tape 2, lines -- lines 3 through 7, sustained on hearsay,
5 lack of foundation, carrying over to lines 11 through 15. So
6 the defense objection there is sustained.

7 Next we're on to tape 3. The government's
8 objection -- I'm looking now at page 6; this is tape 3, page
9 6, lines 4 through 10. The government's objection is
10 sustained on the basis of hearsay as well as lack of
11 foundation.

12 Next, objection from the government, page 11, line
13 25 -- actually 26 -- through page 12, line 15. The
14 government's objection is overruled upon the condition that
15 the word "charity" is stricken. It is without foundation and
16 definition. And what remains is defendant Moalin's sending
17 money to people identified by Abdi as "poor." So I guess the
18 takeaway on that is that the word "charity" is stricken.

19 MS. FONTIER: And so that --

20 THE COURT: Everything else remains.

21 MS. FONTIER: Does that carry over then into line
22 6, my follow-up question; is that correct? Just strike
23 "charity" from my question as well, his answer --

24 THE COURT: Yeah, any reference to "charity."

25 MS. FONTIER: Okay.

1 THE COURT: Next we have an objection by the
2 defense, page 18, lines 9 -- 9 through 13. That would be
3 overruled. I think a good many of these objections are --
4 probably would be withdrawn upon further reflection.

5 Next, on page 21, tape 3, an objection, lines 1
6 through 4. Overruled. The foundation would be sufficient.

7 Next, on page 25, lines 4 through 12, the defense
8 objection is overruled, especially in light of prior
9 testimony on page 24. Sometimes there would be testimony
10 that came in unobjected to and then the same or virtually
11 identical testimony would be elicited at a later point in
12 time and there would be an objection. But in any event, the
13 foundation is sufficient there -- is sufficient -- page 25,
14 lines 4 through 12.

15 MS. FONTIER: And, your Honor, the objection as to
16 the scope was also overruled?

17 THE COURT: Yes. Well, I had -- I noted that the
18 foundation was sufficient. I think the scope is closely
19 related to that. The position of the government is the
20 deponent lived and worked in Guraceel and could testify to
21 his own knowledge of the events occurring in this small town,
22 which I would -- I would tend to agree with.

23 MR. COLE: I also -- we took the position also
24 that, unlike witnesses who are going to be here and subject
25 to recall, this was our only chance to ask the witnesses

1 questions.

2 THE COURT: Yeah, yeah. I don't -- I tried not to
3 be overly technical in looking at some of these objections
4 for the reason mentioned by Mr. Cole. You had one crack at
5 it and you know these folks aren't going to be here.

6 MS. FONTIER: I understand.

7 THE COURT: Okay. Then we're on to -- we're on to
8 tape 4 now. The first objection, page 1, lines 21 through
9 27, then on to page 2, line 1. The objection is overruled.
10 This is a defense objection. Overruled. And the defense
11 objections on the rest of that page, page 2, would be
12 overruled. I think that's probably one you would --

13 MS. FONTIER: These are withdrawn, your Honor.

14 THE COURT: -- would have been happy to withdraw
15 because --

16 MS. FONTIER: Those are withdrawn.

17 THE COURT: I wrote myself a note: The defense
18 can't be serious on this.

19 MS. FONTIER: Yeah, those are withdrawn.

20 THE COURT: Okay. Those are overruled on page 2.
21 All right. Next, page 4, first couple of lines there, page
22 4, lines 1 through 3. Overruled. Defense objection is
23 overruled.

24 Next, page 5, defense objection to lines 7 through
25 14. Overruled. The witness's prior -- just for your

1 information, in my view, the witness's prior testimony laid
2 the foundation for that. Next, page 9 --

3 MS. FONTIER: Your Honor, I would withdraw that.

4 THE COURT: Okay. On page 9?

5 MS. FONTIER: Yes. On 21 through 26?

6 THE COURT: Yes.

7 MS. FONTIER: Yes, I would withdraw that objection.

8 THE COURT: Okay.

9 MR. COLE: Wait, your Honor. That was my
10 objection, wasn't it? Wait a second.

11 MS. FONTIER: Oh, yeah, it was. No wonder I
12 withdraw his objection.

13 MR. COLE: Sorry, your Honor.

14 MS. FONTIER: I was thinking why would I object to
15 that.

16 MR. COLE: Page 9 --

17 THE COURT: Okay. No, you're right. Here's my
18 note.

19 MS. FONTIER: Sorry about that, your Honor.

20 THE COURT: That's okay. Nice try. It's getting
21 late, but here's the ruling on that.

22 MR. COLE: I actually withdraw it, your Honor. I
23 didn't insert it in my chart. I think I looked at it and
24 realized --

25 THE COURT: Just for your own edification, this is

1 what I had: This wasn't listed on the government -- in the
2 government's papers, but I would have been inclined to
3 sustain the objection on foundation, plus the answer appears
4 to be nonresponsive. Look, you're withdrawing it, so that's
5 fine. Okay.

6 There was an objection on page 17, lines 19 through
7 24. They weren't color-coded, but I am overruling the
8 government's objection. Oh, I'm sorry. I'm ahead of myself.
9 I'm already on tape 5 in your papers. No. Strike that.

10 There's no -- no further --

11 MR. COLE: Tape 5, page 17, your Honor?

12 THE COURT: No, no.

13 MR. COLE: Sorry.

14 THE COURT: Forget the earlier reference. I was
15 one -- I wasn't correlating the tape -- with your papers with
16 the transcript here. So on the balance of tape 4 there are
17 no further objections. Let's go to tape 5. I think the
18 first objection I'm dealing with is at page 17. The
19 government has objected to page 17, lines 19 through 24.
20 Overruled. Basic history and context for defendant Moalin.
21 That's how I see this, and I think it's appropriately
22 admissible. Once again, we're getting into an area what's
23 sauce for the goose is sauce for the gander. Where we have
24 context and a little bit of history, whether it's to humanize
25 the defendant, whether it's to provide some kind of a

1 historical/cultural reference for Bryden, we're talking
2 essentially the same kinds of things. The parties should be
3 given some license to create a little bit of a backdrop here,
4 so this objection would be overruled.

5 Tape 6 -- that was it for tape 5. We're on to tape
6 6 now. The government's first objection is page 5, lines 19
7 through 26. That objection is overruled. The objection is
8 relevance. Overruled. It goes over -- the objection goes
9 over to page 6, line 6. Same ruling. Then the next would be
10 page 6, line 15 through lines 28. Overruled on the same --
11 on the same ground. Next, page 6 -- excuse me, page -- well,
12 you have two objections there.

13 MR. COLE: Yes.

14 THE COURT: Yeah. There's an overlap of
15 objections. In any event, the testimony from page 6, line 15
16 through page 7, line 22, all of that is overruled. Those are
17 government's objections; they're overruled on the grounds
18 asserted. Then when we get to page 7, line 24 through page
19 8, line 3, the government's objection is sustained on
20 relevance and hearsay. Okay.

21 Page -- next is page 8, line 22 through page 11,
22 line 10. I'm inclined to sustain this. I'll tell you why.
23 If it were coming in here live -- I'm inclined to sustain it
24 on the basis of relevance; that's the ground the government
25 asserted here. My note here is I'm inclined to sustain it as

1 it relates only to the witness's drought relief work and
2 doesn't involve Mr. Moalin.

3 MS. FONTIER: So, your Honor, would the picture
4 itself be admissible then? And just to take out of this the
5 description of Farah Yare, who's one of the people pictured
6 in this copy --

7 THE COURT: Well, you got me there. I don't know.
8 I really don't know. I'm just looking at the testimony
9 itself. And if any photograph or diagram that was
10 inextricably interwoven here would also be out, but if the
11 diagram or photograph comes in for other purposes or it's
12 stipulated that it can come in because it shows an area of
13 drought relief, for example, is going to be used in
14 connection with other testimony, the other testimony of other
15 witnesses, okay. I have to leave that to your common sense
16 and your ability to work this out. But the evidence -- the
17 testimony itself is not relevant. I would keep it out on 403
18 grounds.

19 MS. FONTIER: Can I have one moment, please? Your
20 Honor, I'm slightly confused because there's two different
21 photographs in this list that --

22 THE COURT: I wasn't even considering the
23 photographs. I'm considering the testimony.

24 MS. FONTIER: So strike the portions of the
25 testimony regarding --

1 THE COURT: The testimony is stricken. If the
2 photographs come in at a later -- in connection with later
3 testimony by this deponent or other deponents or it comes in
4 through agreement with the parties, that's fine, but --

5 MS. FONTIER: All right. Your Honor, I would
6 just --

7 THE COURT: I can't -- we just don't have the time
8 to argue these. And, quite frankly, I did these so long ago
9 now that the context of all of this -- I'd have to probably
10 review the entire testimony of a deponent once again to
11 appreciate what your concern here is or what your request is.
12 I'm just giving you rulings on the objections that were made.

13 MS. FONTIER: Okay.

14 THE COURT: I would suggest you take down the
15 rulings, and if there's something that gives you so much
16 heartburn you can't proceed, without making a pitch, then
17 we'd look at it at some later time, but I know you need these
18 rulings to --

19 MS. FONTIER: Well, your Honor, my only concern on
20 this particular portion of the ruling is that these like
21 questions going into this were just to lay a proper
22 foundation for the admission of the photographs so that I
23 could later question the witness about what was in the
24 photographs and --

25 THE COURT: This witness or another witness?

1 MS. FONTIER: Both. The next -- this whole section
2 that we're talking about.

3 THE COURT: Well, is there any unobjected-to
4 testimony later or is it all objected to on the basis. Does
5 the photograph come in through any other witness? Can it
6 come in through any other witness?

7 MS. FONTIER: I admitted it through this witness,
8 but --

9 MR. COLE: Yeah, I don't know if they can -- if
10 they have other witnesses that get it in or not at trial, but
11 we object to its relevance here, and we object to --

12 THE COURT: I don't know if the photograph is
13 independently relevant in connection with other evidence or
14 not, but we do need to move on, so --

15 MS. FONTIER: All right.

16 THE COURT: If the photograph is inextricably tied
17 to the testimony and there's no other basis to get it in, I'm
18 sustaining the objection to the testimony on the ground
19 asserted. You know, it's five o'clock now. I know the
20 marshals need to get these gentleman back in, so we have a
21 couple of choices now. We can continue on -- I'm happy to
22 continue on if you want to waive the presence of your clients
23 at this point or we can pick up again early in the morning,
24 before nine o'clock, but I know that that imposes a hardship
25 on the marshals. I know that every hour -- every hour we

1 advance any proceeding here I'm informed that these gentlemen
2 have to get up an hour earlier, and they're getting up early
3 enough as it is, so I want them to get their rest as well.

4 MS. FONTIER: Mr. Moalin is definitely choosing to
5 waive his presence for the remainder of this evening.

6 MS. MORENO: The same for Mr. Mohamud.

7 MR. GHAPPOUR: Mr. Doreh as well.

8 THE COURT: Okay. All counsel have waived the
9 presence of their --

10 MR. DURKIN: That's right, Judge.

11 THE COURT: -- clients at this point for the
12 purpose of continuing on. That will relieve our interpreters
13 as well. And then we'll just continue on. Ms. Fontier, I
14 know that you've picked up the laboring oar on this part of
15 the proceedings, that is, deposition testimony. Other
16 counsel are free to remain if they'd like to hear what the
17 rulings are or they're free to --

18 MR. DURKIN: That's what I was going to ask, Judge,
19 if we can be excused.

20 THE COURT: -- free to take your leave. We'll --
21 and the same goes for the government. If only one of you
22 wants to remain behind, I'll work with you, continue on with
23 the rulings and go as far as we can. I've got to leave here
24 within an hour.

25 MS. FONTIER: Okay.

1 THE COURT: Are we breaking then for those leaving?

2 MS. FONTIER: Yes. Thank you, your Honor.

3 THE COURT: For those of you leaving, please take
4 all of your articles, take your papers; we won't be back here
5 in this courtroom again.

6 MS. FONTIER: Your Honor --

7 THE COURT: That's okay. No, no, I never like to
8 break in.

9 MS. FONTIER: You need a big gavel like they have
10 on TV.

11 THE COURT: Only in movies and television. Okay.
12 We're going to continue on, and we're going to have Ms.
13 Fontier and Mr. Cole. You ready to go?

14 MR. COLE: Ready to go.

15 THE COURT: Okay. Mr. Ghappour is leaving. Okay.
16 Ready to go? Mr. Dratel, you going to hang in there with us?
17 You are taking off?

18 MR. DRATEL: I have too much to take care of. I
19 would love to, but --

20 THE COURT: Counsel, thank you for all the patience
21 and cooperation in selecting the jury. I know we were
22 pushing pretty -- at a pretty good pace there over two days,
23 but I appreciate getting this jury selection done on time so
24 that we can work within the schedule. I think you were all
25 anticipating starting the case on Wednesday, tomorrow.

1 Okay. Let's get to -- we're still on tape 6, page
2 11, line 27 through page 12, line 3. The objection is -- the
3 government's objection is sustained on the ground asserted.
4 Page 13, line 20 through page 14, line 5, the objection is
5 sustained on basis of lack of foundation. Page 16, lines 4
6 to 22. The objection is sustained on the basis of relevance.

7 MS. FONTIER: Your Honor, I just want to make a
8 record on that point.

9 THE COURT: Yes.

10 MS. FONTIER: Which is this photograph depicts
11 Farah Shidane, Farah Yare, who is called by the government
12 one of the unindicted co-conspirators who we were unable to
13 call as a witness because we could not get safe passage for
14 him. But I do think that any testimony related to him if
15 he's -- particularly if he's an unindicted co-conspirator is
16 of particular relevance.

17 THE COURT: Well, okay. You've made your point on
18 that. I would sustain the objection on the basis of
19 relevance, 403. This is to lines 4 through 18. It's of
20 minimal probative value, and it's also cumulative. Now, with
21 respect to the testimony on page 16, line 23 through page 18,
22 line 12, this is one of the very few areas where I was going
23 to indicate my tentative thought because I see this as a
24 significant objection -- I mean it's a significant matter,
25 and I'm inclined to sustain this. Originally the witness's

1 testimony seem to be based on his own knowledge. Here he
2 admits his information about defendant's work for -- or plans
3 and drought relief were told to him by Shidane and other
4 committee members.

5 Now, you know, the fact that Shidane didn't want to
6 go to Djibouti to get his deposition taken is really a crying
7 shame. You know, if he had some inordinate fear that he was
8 going to get snapped up, the government I think was on record
9 as indicating they had absolutely no intention of doing that,
10 so Shidane made a decision on his part not to appear for his
11 deposition. And I just think that if he purposefully
12 unavailed himself of the opportunity to -- to appear for his
13 deposition, then this does not come in, that is, information
14 that he might have provided does not come in through hearsay.
15 That's my inclination here.

16 MS. FONTIER: And, your Honor, I do have to object
17 to that sort of recitation of the facts. The government,
18 which we made very clear I think in multiple Rule 15
19 filings/request for safe passage and motioned related to
20 Mr. Shidane. The government stated, as your Honor said, that
21 they had no intention of arresting him, but they would not
22 put that in a written letter; they wouldn't say we won't
23 arrest him. And we went back and forth with the government
24 on this issue, just requesting just even a statement, a
25 letter, a simple letter saying they would not affect his

1 arrest, and when push came to shove, they would not give us
2 that in writing.

3 THE COURT: Okay.

4 MS. FONTIER: They wouldn't say it. So the
5 issue --

6 THE COURT: The issue has been joined. I want to
7 give you an opportunity to make your record; I think you're
8 doing that. But the issue has been joined, as you correctly
9 point out in prior motion work here. I don't know what can
10 be added at this point. All I can do is say that the
11 government's objection here is well-taken.

12 MS. FONTIER: Again, your Honor, just for the
13 record, you know, this is -- we believe that he is -- was
14 called a co-conspirator when he in fact is not. He would
15 have offered exculpatory evidence and was made unavailable
16 because they would not offer him safe passage.

17 THE COURT: Okay. Well, let's continue on then.
18 That takes cakes of testimony through page 18, line 12. Then
19 we have page 18, line 13 through page 22, line 10. The
20 government's objection is sustained generally on relevance
21 grounds without tying defendant Moalin to any particular
22 project. That's also an inadequate foundation for the
23 business record exception under 803 (6). All right. Tape 7,
24 page 13 --

25 MS. FONTIER: Sorry, your Honor. How far did

1 that --

2 THE COURT: For as long as the objection went.

3 MS. FONTIER: It goes all the way through page 22?

4 THE COURT: Yeah, line 10. Okay. We have tape 7
5 through now, page 13, lines 4 through 10. The government's
6 objection is overruled. Page 17, line 3 through 9. If
7 government's objection is withdrawn.

8 On to tape 8, page 3, lines 21 through 24. The
9 government's objection is overruled. Page 5, line 19 through
10 page 6, line 28. All of the objections of the government are
11 sustained. Page 7, line 1 through page 10, lines 12. The
12 objections are sustained.

13 I think -- the next defense objection, page 13, I
14 think that's one you probably want to withdraw, but if not,
15 the objection is overruled. Up to you whether or not you
16 want to withdraw that.

17 MS. FONTIER: Yeah, that's withdrawn, your Honor.

18 THE COURT: Okay. I think that -- I think that
19 does it for -- let's see -- page 17. The objection is
20 overruled. That may be another one you want to just withdraw
21 some testimony. You might want to withdraw upon further
22 reflection, but I'm overruling the defense objection there.

23 MS. FONTIER: Yeah, either way.

24 THE COURT: Okay.

25 MS. FONTIER: Overruled or withdraw is fine by me.

1 THE COURT: Okay. I'll mark it as withdrawn.
2 Next, page 20, lines 22 through 26. I think it falls into
3 the same category; it's either withdrawn or overruled, your
4 choice.

5 MS. FONTIER: Did we skip page 19?

6 THE COURT: If we did --

7 MS. FONTIER: Page 19, line --

8 THE COURT: Yeah, page 19, lines 4 through 15 would
9 be overruled. As I say, you may want to go through so many
10 of your objections that would appear to be appropriate for
11 withdrawing. But in any event, I'll give you the rulings
12 now. Page 20, lines 22 through 26 and on to page 21 through
13 lines 2, 1 and 2. The objection of the defense is overruled.
14 And same ruling for page 23, lines 8 through 10.

15 Tape 9, page 1. The objection of the defense at
16 lines 5 through 11 would be overruled, especially in light of
17 the answer.

18 MS. FONTIER: I believe I withdrew that.

19 THE COURT: Okay. Nobody told me.

20 MR. COLE: I'm sorry. Tape 9, page 1, 6 through
21 11?

22 THE COURT: Yes.

23 MR. COLE: Thank you, your Honor.

24 THE COURT: That's overruled. I mean withdrawn
25 apparently. Okay. Page 2, lines 12 through 18. The defense

1 objection would be overruled in light of the responsive
2 answer. You may want to withdraw that, but the ruling is
3 overruled.

4 MS. FONTIER: I guess I have a -- this one is not
5 color-coded; that's why I'm confused. Sorry, this particular
6 tape of mine, but I can work with it.

7 THE COURT: Okay. Page 3, defense objection, lines
8 13 through 19, overruled in light of the answer and prior
9 testimony. Page 6, lines 1 through 19. The objection is
10 overruled. This goes to the witness's understanding of
11 al-Shabaab and the threat posed in '07 to '08. Page 7,
12 lines 6 through 11, overruled. Page 11, the only objection I
13 see is at lines 10 through 22 in light of the unobjected-to
14 prior testimony. So if you look to the testimony from lines
15 1 through 9, which came in without objection, and then you
16 look at the testimony, the objected-to the testimony from the
17 defense, lines 11 through 22, it's -- the objection is
18 overruled in light of the unobjected-to prior testimony.

19 MS. FONTIER: I'm sorry, your Honor. What page are
20 we on? I'm totally lost.

21 THE COURT: Page 11.

22 MS. FONTIER: Page 11 of tape 9?

23 MR. COLE: Yes.

24 THE COURT: Yes.

25 MR. COLE: It's 11 through 22.

1 MS. FONTIER: I don't see an objection.

2 THE COURT: Well, it's color-coded here in green.

3 MS. FONTIER: I think I must have printed the wrong
4 -- I mean I don't have any objections on this one, so I'm
5 assuming that this type of mine is the wrong color, the
6 wrong --

7 MR. COLE: The objection was at line 22
8 specifically I think.

9 MS. FONTIER: Right. I'm looking at this and I
10 don't even have the word "objection" on here, so that's why
11 I'm concerned now that I'm totally off base here.

12 THE COURT: Okay. So objection withdrawn then on
13 page 11? Well, the objection -- the color-coding I'm looking
14 at is from line 10, the question starting at line 10 and a
15 half there through 22. The objection is overruled in light
16 of the unobjected-to prior testimony.

17 MR. COLE: Just to save time, I'll sit next to her
18 with my copy because I --

19 MS. FONTIER: I just lost --

20 THE COURT: Okay.

21 MS. FONTIER: Because this -- we're on a different
22 page totally.

23 THE COURT: Okay. Ready?

24 MR. COLE: Yes.

25 MS. FONTIER: Yes, your Honor.

1 THE COURT: Okay. Continuing on, now we probably
2 won't have that problem anymore. All right. Here we go
3 again. Page 17, I see green, lines 11 through 23. The
4 objection is overruled if it's still being pursued.

5 MS. FONTIER: It is, your Honor.

6 THE COURT: Page 18, lines 19 through 22,
7 overruled. Page 19, testimony -- there's an objection to
8 lines 1 through 4. Overruled, especially in light of the
9 answer at line 6. Page 21, it's overruled in light of other
10 unobjected-to testimony regarding Shongole and also on the
11 basis of relevance and -- on the basis of relevance.

12 Next, page 23, the objection is overruled; that's
13 lines 11 through 16. Next, page 24, lines 6 through 10, the
14 objection is overruled. Now we're on to tape 10. You with
15 me?

16 MS. FONTIER: Yes.

17 THE COURT: Tape 10, okay? Okay. It starts on
18 page 1, line 24 through page 2, line 14. Each of the
19 objections would be overruled, the hearsay objections. Next,
20 we have page 3, I've got lines 3 through 17 in green
21 indicating a defense objection. It would be overruled. This
22 testimony concerns -- or the questions inquire into the
23 witness's knowledge and familiarity with Yare, gone into
24 extensively on direct examination, so I don't know -- I don't
25 understand why it would be objected to on cross-examination.

1 Be that as it may.

2 Page 4, the objection is -- this is defense
3 objection -- the objection is sustained to lines -- from
4 lines 2 to 23 in light of the objections and clarifications.
5 Sustained as to lines 2 through 23. Overruled as to line 24
6 on page 4 through line 5 on page 5.

7 Next, we have page 6, objection to testimony from
8 page 6, line 15 through page 7, line 10. The defense
9 objection is to -- the objection is overruled.

10 Next, we have on page 10, line 23 through page 11
11 line 5. The objection is overruled in light of testimony on
12 page 11, particularly at lines 21 and 23. Turn to page 14,
13 please.

14 MS. FONTIER: Of --

15 THE COURT: No, there's no objection there.

16 MS. FONTIER: Okay.

17 THE COURT: Okay. Tape 10, page 20. The
18 government's objection here is overruled. The answer is
19 self-limiting as to foundation. Next, page 21, lines 14
20 through 27 and onto the following page through line 21. The
21 government's objection is sustained on the basis of
22 relevance. Okay. We're on to tape 11. Page 2 -- you with
23 me?

24 MS. FONTIER: Yeah, I just want to make --

25 THE COURT: Tape 11, page 2, line 22 to page 3,

1 line 11. This is the government's objection. It is
2 overruled. It is overruled. This provides some context for
3 defendant's family and witness's knowledge of defendant
4 Moalin. That one is overruled.

5 Next, page 4, lines 10 through 14. Government's
6 objection is overruled on the stated ground of relevance and
7 later testimony clarifies without any objection. Page 20 --
8 page 5, lines 14 through 17. Government's objection is
9 sustained.

10 Next objection I see would be page 18. It's a
11 defense objection. The defense is conceding that these are
12 ill-taken, so the objection is withdrawn.

13 Next, page 19. Are you on page 19? I've got
14 defense objections from lines 4 through 12 and 18 through the
15 bottom of the page on to line 1 of page 20.

16 MR. COLE: I'm sorry, your Honor. For 18, 19, and
17 20, we were basically just agreeing with their objections.

18 THE COURT: Okay.

19 MS. FONTIER: Okay.

20 THE COURT: Okay. So sustained. I was confused
21 about that.

22 MR. COLE: Sorry.

23 MS. FONTIER: I'm confused about this as well
24 because is this --

25 THE COURT: Okay.

1 MS. FONTIER: I'm just -- I just would like if I
2 can look at the government's because I think this version of
3 mine has the names interspersed, so I'm not sure who's
4 talking when. Okay. That makes a lot more sense. My
5 version has my name where Caroline Han's should be, and I
6 didn't think these were the questions I would be asking. So
7 those are sustained.

8 MR. COLE: Yes.

9 MS. FONTIER: Thank you, your Honor. Ready to go.

10 THE COURT: Okay. Page 22, lines 1 through 4. The
11 defense objection is sustained. And the term "brag" is
12 ambiguous. That's what I have in my note. Okay.

13 What are we to? Tape 12. Okay. First -- the
14 first real substantial objection here, page 7, line 10
15 through page 10, line 7. Lot of material there, and here's
16 the ruling. The government's objection to this testimony
17 regarding the orphan center in the Guraceel area in '06, '08
18 is overruled. The testimony is somewhat confusing, but
19 appears to lay a proper foundation for such an endeavor with
20 some funding from the "diaspora" -- quotes around diaspora --
21 it provides some linkage to the defendant's position that
22 money was sent for purposes other than supporting al-Shabaab.
23 So basically the objection -- the basis for the objection is
24 just too narrow a ground to bar the testimony. Okay.

25 MR. COLE: Where did that go into? Where did that

1 run to, your Honor?

2 THE COURT: Well, it's your objection from page --
3 this is tape 12, page 7, line 10 --

4 MR. COLE: Yes.

5 THE COURT: All the way to page 10, line 7.

6 MR. COLE: Okay. Gotcha. I'm sorry. That's a
7 yes, your Honor.

8 THE COURT: Okay.

9 MR. COLE: "Gotcha" is a little informal. I
10 apologize.

11 THE COURT: I'm begging for a little informality at
12 this point. Anything that will help pass the time.

13 MR. COLE: Okay.

14 THE COURT: Okay. Then we have page 10, line 20
15 through page 11, line 5. Same ruling, overruled. Then we
16 have page 11, line 13 through page 12, line 10. Government's
17 objection is overruled. Next, we have page 21, lines 1
18 through 17. Well, before that, before we get to page 21,
19 there's a defense objection, page 18, the defense objection,
20 lines 3 through 22, sustained. There was a lack of
21 foundation for the question but even the answer was
22 nonresponsive.

23 Page 21, the government is objecting, lines 1
24 through 16 or 17. The government's objection is sustained.
25 Next, page 22, line 12 through page 23, line 3. The

1 objections are sustained. Also there's a hearsay issue, but
2 you've got speculation, foundation, and hearsay is indicated
3 in the government's pleading.

4 Next, page 24. I think this may be an area where
5 the defense wants to withdraw the objection, but in any
6 event, it's overruled. This is page 24, line 23 through
7 page 25, line 11. The area of testimony previous -- this is
8 an area of testimony previously explored by both sides as
9 well as later, so it seemed to be one of those areas -- look
10 at 16 through 18: Same subject, no objection. Okay.

11 Here we go. Tape 13. I think the first objection
12 is at page 18, lines 4 through 7. The government's objection
13 is overruled. This may be received as or considered as
14 information received by the witness. Next, page 24, lines 2
15 through 11. I'm going to sustain this. I didn't see any
16 prior testimony in this witness's testimony with any
17 indication that he handled or directed funds from the
18 diaspora. The objection is sustained. And I don't know that
19 his early reference to collecting money and livestock made
20 any reference to the diaspora. I just think that that was
21 his job amongst the local -- the local folks there, not the
22 diaspora.

23 Okay. Next we're on to tape 14. The government's
24 objection, first objection --

25 MS. FONTIER: What page, your Honor?

1 THE COURT: Pardon me?

2 MS. FONTIER: We're on tape 14.

3 THE COURT: Tape 14. Turn to page 12, tape 14.

4 This is the first objection I encountered.

5 MS. FONTIER: Yes.

6 THE COURT: The government's objection is from
7 lines 15 through 25. Overruled. Page 13, the government's
8 objection, lines 5 through 9, overruled. The government's
9 objection --

10 MR. COLE: The defense objection?

11 THE COURT: Excuse me. No, there is no objection
12 there. I see no objection. Page 16, I see no objection.

13 MR. COLE: Page 16 of tape 14.

14 THE COURT: Yes. There was just a note to myself.

15 MR. COLE: Okay.

16 THE COURT: Okay. Next objection, page 21 at lines
17 17 through 25. It doesn't really seem like an objection to
18 me. I don't know --

19 MS. FONTIER: I think it was a --
20 misstates-the-testimony sort of objection, but I think we'll
21 just withdraw it at this point.

22 THE COURT: Okay. Same thing -- let's see -- page
23 22, lines 12 through 14. It's kind of a no harm, no foul.

24 MS. FONTIER: Yes, your Honor.

25 THE COURT: Okay.

1 MS. FONTIER: I mean the objection was to sort of
2 the form of the question and the answer asked him to rephrase
3 the question, so it's withdrawn.

4 THE COURT: Okay. Then we have objection on page
5 24, line 20. This is a defense objection, page 24, line 20
6 through page 25, line 9. Is that being pursued? I've got it
7 as overruled. If you don't want to withdraw it, it's
8 overruled.

9 MS. FONTIER: Your Honor, I think that those -- I
10 highlighted those because I wasn't sure what was happening
11 because there was the overlap, and it seems the objections
12 may have been to form as Judge Gallo ruled on them.

13 THE COURT: Well, do you want to withdraw that?

14 MS. FONTIER: They can be withdrawn, yes.

15 THE COURT: Okay. That takes care of tape 14 I
16 believe. Next we're on to tape 15, page 6. I have a note
17 here, what is the defendant's objection? The question was
18 not answered. And I also have objected to in light of
19 unobjected-to testimony on the next page, particularly at
20 lines 8 through 17. You want to withdraw that? It's
21 overruled in any event. It's up to you.

22 MS. FONTIER: I'm confused. I guess it's withdrawn
23 because I don't know what the basis might be. I'm very
24 confused by that objection too.

25 THE COURT: Why don't you -- I think it would be

1 better if you just withdrew that.

2 MS. FONTIER: I'll withdraw that.

3 THE COURT: Okay. We're getting there, lady and
4 gentleman. Okay. Then we have page 16, line 23 through
5 19 -- actually through page 20, line 1. The defense
6 objection to this line of questioning is overruled. But the
7 transcript really needs to be cleaned up. You've got an
8 awful lot of argument and statements of counsel there. So
9 the objection is overruled, but please clean that one up.
10 It's got a lot of underbrush in there.

11 Okay. Next, page 22, lines 12 through 16.
12 Overruled, defense objection overruled.

13 MS. FONTIER: Sorry, what page, your Honor?

14 THE COURT: Page 22.

15 MS. FONTIER: There was issue with page 18 -- so
16 this is page 18 through 20?

17 THE COURT: Page 16 -- from page 16 -- you got
18 running objections to all the testimony from page 16, line 23
19 all the way to page 18.

20 MS. FONTIER: That's right.

21 THE COURT: Excuse me. All the way to page 20,
22 line 1. And so I'm overruling the objections there but
23 telling you you really need to clean up the transcript there,
24 the tape.

25 MR. COLE: It's all attorney discussion.

1 MS. FONTIER: Right. This was a very awkward
2 portion whether there was -- issues of the interpreter
3 interpreting a Somali word and we're --

4 THE COURT: We're getting there. Page 22, lines 12
5 through 16 and lines 24 through 28. The objection would be
6 overruled, objections. And then that went over to -- carried
7 over to page 23, line 1 and then there's another objection,
8 page 23, lines 5 through 15, defense objection overruled.
9 And then finally page 24, line 8 through page 25, line 19. I
10 have I need further comment from counsel. I guess I just
11 didn't understand that very well.

12 MR. COLE: As I understand this one -- Ms. Fontier
13 can tell me if I'm wrong -- this was one where they thought I
14 was going to ask a series of questions based on my
15 understanding of what is said in an audio call that their
16 translator may disagree with that. And may be the case. I
17 mean they may have their own translation, but I needed to be
18 able to ask the witness about what we believe the call means
19 and based my examination based on the evidence we're going to
20 offer. And so that's why I thought -- it's right not an
21 objection. It's they could have asked the same witness about
22 their view of the translation if they wanted to.

23 THE COURT: Okay. Is --

24 MS. FONTIER: I think that's basically correct,
25 your Honor. The question that is -- it refers to Hassan

1 Dahir Aweys is -- particularly his name we believe is not in
2 this particular translation; it's a different name that is
3 translated according to our interpreter. So I mean if
4 this -- this is one of the things we're never going to be able
5 to agree on. What I guess I would suggest is we just take
6 out the portions that are nontestimonial when we're going --
7 Josh is going back and forth --

8 THE COURT: Can you two work it out, what's going
9 to be cleaned up?

10 MS. FONTIER: Yes, no problem.

11 MR. COLE: Sure.

12 THE COURT: Okay. I'll indicate the objection is
13 withdrawn but you'll be cleaning that up. Well, thank you.

14 MR. COLE: Thanks for staying late, your Honor, and
15 your staff.

16 THE COURT: And my what?

17 MR. COLE: And your staff for staying late.

18 THE COURT: Yes, yes. You're welcome. Let me ask
19 you something. How long do you think opening statements will
20 be tomorrow?

21 MR. COLE: I think that ours will be less than 30
22 minutes.

23 THE COURT: Okay. How about the defense? Any
24 idea? Have you discussed this? Do you know?

25 MS. FONTIER: Well, given that there are four makes

1 it slightly more difficult, but I think that the longest will
2 probably be 30, 35 minutes, and I think sort of in order,
3 they'll get shorter and shorter.

4 THE COURT: Okay. Listen, let's make Judge
5 Gonzalez happy. She's been very generous, so let's leave no
6 trace, as we say in backpacking.

7 (There was a break in the proceedings for the evening
8 recess.)

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Certificate of Reporter

I hereby certify that I am a duly appointed, qualified, and acting Official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the mentioned cause on the date or dates listed on the title page of the transcript; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated January 9, 2014 at San Diego, California.

Debra M. Henson

/s/ Debra M. Henson (electronic)
Debra M. Henson
Official Court Reporter